(23,551)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 461.

FREMONT WEEKS, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

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a In the District Court of the United States for the Western Division of the Western District of Missouri.

No. 3007.

FREMONT WEEKS, Plaintiff in Error,
vs.
UNITED STATES, Defendant in Error.

Citation to Defendant in Error.

UNITED STATES OF AMERICA, *ss:*

To the United States, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States to be holden at the city of Washington, on the 16th day of December next, pursuant to a writ of error filed in the Clerk's office of the United States District Court in the Western Division of the Western District of Missouri, wherein Fremont Weeks is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and speedy justice be done to the parties in that behalf.

Given under my hand at the city of Kansas City in the District above named, this 16th day of November, in the year of our Lord one thousand nine hundred and twelve.

ARBA S. VAN VALKENBURGH,
Judge of the District Court of the United States for the Western District of Missouri.

b *Affidavit of Service of Citation.*

STATE OF MISSOURI,
County of Jackson, ss:

On this 16th day of November, 1912, personally appeared before me, a notary public within and for said County, Martin J. O'Donnell and made oath that he delivered a copy of the within citation to defendant in error by delivering same to the District Attorney of the United States for the Western District of Missouri, who represented defendant in error at the trial of this cause and still represents defendant in error, on the 16th day of November, 1912.

MARTIN J. O'DONNELL.

Subscribed and sworn to before me this 16th day of November, 1912.

My commission expires April 20, 1916.

[Seal of Emma Powers, Notary Public, Jackson County, Mo.]

Notary Public in and for Jackson County, Mo.

c [Endorsed:] No. 3007. United States, Plaintiffs, vs. Fremont Weeks, Defendant. Citation to Defendant in Error. Original. Filed November 16, 1912. John B. Warner, Clerk. Martin J. O'Donnell, Harry Farrabee, Attorneys for Defendant.

d UNITED STATES OF AMERICA, *sct:*

The President of the United States to the Judge of the District Court of the United States for the Western Division of the Western District of Missouri, Greeting:

Because, in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said District Court, before you, between the United States of America and Freemont Weeks a manifest error hath happened, to the great damage of the said Freemont Weeks as by his complaint appears.

We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States together with this writ, so that you may have the same at Washington, D. C. on the 16th day of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States, should be done.

Witness, The Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, and the seal of the District Court.

Issued at office in Kansas City, this 16th day of November A. D. 1912.

[Seal of the United States District Court of Missouri, Western Division, Western District.]

JOHN B. WARNER, *Clerk,*
By —— ——, *D. C.*

e [Endorsed:] United States District Court, Western District of Missouri, Western Division. United States vs. Fremont Weeks. Writ of Error. Filed November 16 1912. John B. Warner, Clerk.

WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI, *sct:*

I do hereby return due and perfect obedience to the within writ, and do herewith, under the seal of said District Court, distinctly and openly send the record and proceedings aforesaid, with all things concerning the same, in accordance with stipulation and præcipe filed herein.

Witness my hand as Clerk, and the seal of said Court.

Issued at office in Kansas City this 13th day of February A. D. 1913.

[Seal of the United States District Court of Missouri, Western Division, Western District.]

JOHN B. WARNER, *Clerk,*
By —— ——, *Deputy Clerk.*

1 UNITED STATES OF AMERICA, *sct:*

Be it remembered, that heretofore, to-wit, at the regular April Term of the United States District Court for the Western Division of the Western District of Missouri, and on the 24th day of April, A. D. 1912, the following entry appears of record, in the case of The United States vs. Fremont Weeks, No. 3007, to-wit:—

This day comes the Grand Jury and makes presentment as follows:

3007.

UNITED STATES
vs.
FREMONT WEEKS.

Shipping Lottery Tickets by Express and Using Mails for Lottery.

A true bill.

H. G. BLAKELEY, *Foreman.*

The 2nd, 6th and 7th counts of said Indictment, filed April 24th, 1912, are in words and figures as follows, to-wit:—

2 Second Count.

And the Grand Jurors aforesaid, upon their oaths aforesaid do further present and charge that on or about the 17th day of September, 1911, at Kansas City, Jackson County, Missouri, and at the Western Division of the Western District of Missouri and within the jurisdiction of this Court, one Fremont Weeks then and there being, did then and there unlawfully, wilfully, knowingly and feloniously deposit, and cause to be deposited, with the American Express Company, a common carrier of freight, express and packages between Kansas City, Missouri, and Parsons, Kansas, for carriage and transportation by said express company from said Kansas City, Missouri, to Parsons, Kansas, and to be delivered to one J. P. Todd, at Parsons,

Kansas, certain papers, certificates and instruments purporting to be and to represent tickets, chances, shares and interests in and dependent upon the event of a lottery and gift enterprise, and dependent upon lot and chance, to-wit, one certain whole or dollar ticket and two half or fifty cent tickets purporting to be issued by the International Mining & Investment Company of San Domingo, which company issues monthly a large number of tickets or coupons divided into denominations of whole, half and quarter tickets, the whole tickets selling for one dollar, the half tickets selling for fifty cents, and the quarter tickets selling for twetny-five cents, a small proportion of which tickets or coupons, issued as aforesaid, entitle the holder and holders thereof to participate in the distribution in the form of alleged dividends and premiums by such company of a large sum of money, which distribution and payment of money is dependent upon lot and chance, the manner in which such alleged premiums and dividends are declared and paid and allotted to the holders of tickets and coupons is to the Grand Jurors unknown, and which said tickets and coupons, except as to the dates and numbers
3 thereof (the dates and numbers thereof being to the Grand Jurors unknown) are in form and words and figures as follows, to-wit:

The whole ticket on the one side as follows:

The International Mining and Investment Co.

Whole Class. SAN DOMINGO, *December* 20, 1911.

50290 L U. S. Issue. 100,000 Coupons. Capital Coupon, $16,000.

1 Dollar. This is to certify that the holder hereof has paid the above named company the sum of one dollar part payment on a whole share of stock in said company of the par value of One Hundred and Twenty Dollars per share being payable in monthly installments of one dollar each, this certificate entitles the holder to such premium granted its number from said company if presented within ninety days from date hereof without any Extra Fee or commission.

Capital Stock, $1,000,000.00.

Six	Seven	Seven	Four	One
6	7	7	4	1
Seis	Siete	Siete	Cuatro	Uno

T. J. WANETO,
Manager.

MANUEL DIGHAS,
Commissioner.

The whole ticket on the other side as follows:

The International Mining and Investment Co.

This Certificate will not be valid if pieced, mutilated, disfigured or in any way cancelled or its number altered.

List of Dividends.

1	Capital Premium	$16,000	$16,000
1	" "	4,000	4,000
1	" "	2,000	2,000
1	" "	1,000	1,000
2	Premiums of	$500 each	1,000
5	" "	200 "	1,000
10	" "	100 "	1,000
25	" "	60 "	1,500
50	" "	40 "	2,000
100	" "	20 "	2,000
200	" "	10 "	2,000
300	" "	8 "	2,400
600	" "	5 "	3,000

4

Approximations.

100	Premiums of	$12	$1,200
100	" "	10	1,000
100	" "	8	800
100	" "	6	600

Terminals.

999	Premiums of	$5	$4,995
999	" "	4	3,996
999	" "	4	3,996
999	" "	2	1,998
5,692	Prem's, amounting to		$57,485

This coupon is a duplicate of the original, the latter being retained at headquarters by the management of this company and at the consent of the holder hereof. Ample deposits will be retained in National Banks to enable local agents to promptly pay all dividends upon the surrender of said duplicate coupons.

Each of the half tickets on the one side as follows:

The International Mining and Investment Co.

Half Class. SAN DOMINGO, *December* 20, 1911.

1978 L U. S. Issue. 100,000 Coupons. Capital Coupon, $16,000.

50 Cents. This is to certify that the holder hereof has paid the above named company the sum of 50 cents part payment on a half share of stock in said Company of the par value of One Hundred and Twenty Dollars per share being payable in monthly installments of one dollar each, this certificate entitles the holder to such premium granted its number from said company if presented within ninety

days from date here of without any extra fee or commission.

Capital Stock, $1,000,000.00.

Four	Four	Three	Five	Nine
4	4	3	5	9
Cuatro	Cuatro	Tres	Cinco	Nueve

T. J. WANETO,
Manager.

MANUEL DIGHAS,
Commissioner.

On the other side as follows, to-wit:

5 The International Mining and Investment Co.

This certificate will not be valid if pieced, mutilated, disfigured or in anyway cancelled or its number altered.

List of Dividends.

1	Capital Premium		$16,000			$16,000
1	"	"	4,000			4,000
1	"	"	2,000			2,000
1	"	"	1,000			1,000
2	Premiums of		$500	each		1,000
5	"	"	200	"		1,000
10	"	"	100	"		1,000
25	"	"	60	"		1,500
50	"	"	40	"		2,000
100	"	"	20	"		2,000
200	"	"	10	"		2,000
300	"	"	8	"		2,400
600	"	"	5	"		3,000

Approximations.

100	Premiums of	$12		$1,200
100	"	"	10	1,000
100	"	"	8	800
100	"	"	6	600

Terminals.

999	Premiums of	$5		$4,995
999	"	"	4	3,996
999	"	"	4	3,996
999	"	"	2	1,998
5,692	Prem's, amounting to			$57,485

This Coupon is a duplicate of the original, the latter being retained at headquarters by the management of this company and at the consent of the holder hereof. Ample deposits will be retained in National Banks to enable local agents to promptly pay all dividends upon the surrender of said duplicate coupons.

6 And that the aforesaid tickets or coupons were deposited with said express company by defendant as aforesaid at Kansas City Missouri, as aforesaid, for carriage as aforesaid, and were intended by defendant to be, and were delivered by said express company, as aforesaid, to one J. P. Todd at Parsons, Kansas, and such tickets and coupons purported to entitle the said J. P. Todd and the holder thereof to participate in the distribution of the alleged dividends and premiums as aforesaid, and purported to represent tickets, chances, shares and interests in the distribution of such alleged dividends and premiums as aforesaid, and which was dependent upon lot and chance, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States.

Sixth Count.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and charge that on or about the 1st day of December, 1911, at Kansas City, Jackson County, Missouri, and at the Western Division of the Western District of Missouri and within the jurisdiction of this court, one Fremont Weeks then and there being, did then and there unlawfully, wilfully, knowingly and feloniously deposit, and cause to be deposited, with the American Express Company, a common carrier of freight, express and packages between Kansas City, Missouri, and Parsons, Kansas, for carriage and transportation by said express company from said Kansas City, Missouri, to Parsons, Kansas, and to be delivered to one J. W. Easley at Parsons, Kansas, certain papers, certificates and instruments purporting to be and to represent tickets, chances, shares, and interests in and dependent upon the event of a lottery and gift enterprise, and dependent
7 upon lot and chance, to-wit, one certain whole or dollar ticket and two half or fifty cent tickets and one quarter or twenty-five cent ticket, purporting to be issued by the International Mining & Investment Company of San Domingo, which company issues monthly a large number of tickets or coupons divided into denominations of whole, half, and quarter tickets, the whole tickets selling for one dollar, the half tickets selling for fifty cents, and the quarter tickets selling for twenty-five cents, a small proportion of which tickets or coupons, issued as aforesaid, entitle the holder and holders thereof to participate in the distribution in the form of alleged dividends and premiums by such company of a large sum of money, which distribution and payment of money is dependent upon lot and chance, the manner in which such alleged premiums and dividends are declared and paid and allotted to the holders of tickets and coupons is to the Grand Jurors unknown, and which said tickets and coupons except as to the dates and numbers thereof (the dates and

numbers thereof being to the Grand Jurors unknown) are in form and words and figures as follows, to-wit:

8 The whole ticket on the one side as follows:

The International Mining and Investment Co.

Whole Class. SAN DOMINGO, *December* 20, 1911.

50286 L U. S. Issue. 100,000 Coupons. Capital Coupon, $16,000.

1 Dollar. This is to certify that the holder hereof has paid the above named company the sum of one dollar part payment on a whole share of stock in said company of the par value of One Hundred and Twenty Dollars per share being payable in monthly installments of one dollar each, this certificate entitles the holder to such premium granted its number from said company if presented within ninety days from date here of without any Extra Fee or commission.

Capital Stock, $1,000,000.00.

Seven	Two	Seven	Two	Three
7	2	7	2	3
Siete	Dos	Siete	Dos	Tres

T. J. WANETO,
Manager.

MANUEL DIGHAS,
Commissioner.

The whole ticket on the other side as follows:

The International Mining and Investment Co.

This certificate will not be valid if pieced, mutilated, disfigured or in anyway cancelled or its number altered.

List of Dividends.

1	Capital Premium	$16,000	.....	$16,000
1	" "	4,000	.....	4,000
1	" "	2,000	.....	2,000
1	" "	1,000	.....	1,000
2	Premiums of	$500 each	.....	1,000
5	" "	200 "	.....	1,000
10	" "	100 "	.....	1,000
25	" "	60 "	.....	1,500
50	" "	40 "	.....	2,000
100	" "	20 "	.....	2,000
200	" "	10 "	.....	2,000
300	" "	8 "	.....	2,400
600	" "	5 "	.....	3,000

9 *Approximations.*

100	Premiums of	$12	$1,200
100	" "	10	1,000
100	" "	8	800
100	" "	6	600

Terminals.

999	Premiums of	$5	$4,995
999	" "	4	3,996
999	" "	4	3,996
999	" "	2	1,998
5,692	Prem's, amounting to		$57,485

This Coupon is a duplicate of the original, the latter being retained at headquarters by the management of this company and at the consent of the holder hereof. Ample deposits will be retained in National Banks to enable local agents to promptly pay all dividends upon the surrender of said duplicate coupons.

Each of the half tickets on the one side as follows:

The International Mining and Investment Co.

Half Class. SAN DOMINGO, *December* 20, 1911.

50298 L U. S. Issue. 100,000 Coupons. Capital Coupons, $16,000.

50 Cents. This is to certify that the holder hereof has paid the above named company the sum of 50 cents part payment on a half share of stock in said Company of the par value of One Hundred and Twenty Dollars per share being payable in monthly installments of one dollar each, this certificate entitles the holder to such premium granted its number from said company if presented within ninety days from date here of without any extra fee or commission.

Capital Stock, $1,000,000.00.

Six	Five	Two	Five	Six
6	5	2	5	6
Seis	Cinco	Dos	Cinco	Seis

T. J. WANETO,
Manager.

MANUEL DIGHAS,
Commissioner.

On the other side as follows, to-wit:

10 The International Mining and Investment Co.

This certificate will not be valid if pieced, mutilated, disfigured or in anyway cancelled or its number altered.

List of Dividends.

1	Capital Premium	$16,000	$16,000
1	" "	4,000	4,000
1	" "	2,000	2,000
1	" "	1,000	1,000
2	Premiums of	$500 each	1,000
5	" "	200 "	1,000
10	" "	100 "	1,000
25	" "	60 "	1,500
50	" "	40 "	2,000
100	" "	20 "	2,000
200	" "	10 "	2,000
300	" "	8 "	2,400
600	" "	5 "	3,000

Approximations.

100	Premiums of	$12	$1,200
100	" "	10	1,000
100	" "	8	800
100	" "	6	600

Terminals.

999	Premiums of	$5	$4,995
999	" "	4	3,996
999	" "	4	3,996
999	" "	2	1,998
5,692	Prem's, amounting to		$57,485

This Coupon is a duplicate of the original, the latter being retained at headquarters by the management of this company and at the consent of the holder hereof. Ample deposits will be retained in National Banks to enable local agents to promptly pay all dividends upon the surrender of said duplicate coupons.

11 The quarter or twenty-five cent tickets on the one side is follows:

The International Mining and Investment Co.

Quarter Class. SAN DOMINGO, *December* 20, 1911.

1996 L U. S. Issue. 100,000 Coupons. Capital Coupon, $16,000.

25 Cents. This is to certify that the holder hereof has paid the above named company the sum of 25 cents part payment on a ¼ share of stock in said company of the par value of one hundred and twenty dollars per share being payable in monthly installments of 25 cents each, this certificate entitles the holder to such premium granted its number from said company if presented within ninety days from date hereof without any extra fee or commission.

One	One	Nine	Six	Eight
1	1	9	6	8
Uno	Uno	Nueve	Seis	Ocho

Capital Stock, $1,000,000.00.

T. J. WANETO,
Manager.

MANUEL DIGHAS,
Commissioner.

On the other side as follows:

The International Mining and Investment Co.

This certificate will not be valid if pieced, mutilated, disfigured or in anyway cancelled or its number altered.

List of Dividends.

1	Capital Premium	$16,000			$16,000
1	" "	4,000			4,000
1	" "	2,000			2,000
1	" "	1,000			1,000
2	Premiums of	$500	each		1,000
5	" "	200	"		1,000
10	" "	100	"		1,000
25	" "	60	"		1,500
50	" "	40	"		2,000
100	" "	20	"		2,000
200	" "	10	"		2,000
300	" "	8	"		2,400
600	" "	5	"		3,000

12 *Approximations.*

100	Premiums of	$12	$1,200
100	" "	10	1,000
100	" "	8	800
100	" "	6	600

Terminals.

999	Premiums of	$5	$4,995
999	" "	4	3,996
999	" "	4	3,996
999	" "	2	1,998
5,692	Prem's, amounting to		$57,485

This Coupon is a duplicate of the original, the latter being retained at headquarters by the management of this company and at the consent of the holder hereof. Ample deposits will be retained in National Banks to enable local agents to promptly pay all dividends upon the surrender of said duplicate coupons.

And that the aforesaid tickets or coupons were deposited with said express company by defendant as aforesaid at Kansas City Missouri, as aforesaid, for carriage as aforesaid, and were intended by defendant to be, and were delivered by said express Company, as aforesaid, to one J. W. Easley at Parsons, Kansas, and such tickets and coupons purported to entitle the said J. W. Easley and the holder thereof to participate in the distribution of the alleged dividends and premiums as aforesaid, and purported to represent tickets, chances, shares and interests in the distribution of such alleged dividends and premiums as aforesaid, and which was dependent upon lot and chance, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States.

13 Seventh Count.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further present and charge that on or about the 17th day of September, 1911, at Kansas City, Missouri, and at the Western Division of the Western District of Missouri, and within the jurisdiction of this court, one Fremont Weeks, then and there being, did then and there unlawfully, wilfully, knowingly and feloniously deposit, and cause to be deposited, in the United States Postoffice at Kansas City, Missouri, for mailing and delivery by the postoffice establishment of the United States to one J. P. Todd at Parsons, Kansas, certain papers, certificates and instruments purporting to be and to represent tickets, chances, shares and interests in and dependent upon the event of a lottery and gift enterprise, dependent in whole of in part upon lot and chance, to-wit, one certain whole or dollar ticket and one half or fifty cent tickets, purporting to be issued by the International

Mining & Investment Company of San Domingo, which Company issues monthly a large number of tickets or coupons divided into denominations of whole tickets, half tickets and quarter tickets, the whole tickets selling for one dollar, the half tickets selling for fifty cents, and the quarter tickets selling for twenty-five cents, a small proportion of which tickets or coupons so issued as aforesaid entitle the holder and holders thereof to participate in the distribution in the form of alleged dividends and premiums by such company of a large sum of money, which distribution and payment of money is dependent upon lot and chance, the manner in which such alleged premiums and dividends are declared and paid and allotted to the holders of tickets and coupons is to the Grand Jurors unknown, and which said coupons and tickets, except as to the dates and numbers thereof (the dates and numbers thereof being to the Grand Jurors unknown) are in words and figures as follows, to-wit:

14 The whole ticket on the one side as follows:

The International Mining and Investment Co.

Whole Class. SAN DOMINGO, *December* 20, 1911.

50290 L U. S. Issue. 100,000 Coupons. Capital Coupon, $16,000.

1 Dollar. This is to certify that the holder hereof has paid the above named company the sum of one dollar part payment on a whole share of stock in said company of the par value of One Hundred and Twenty Dollars per share being payable in monthly installments of one dollar each, this certificate entitles the holder to such premium granted its number from said company if presented within ninety days from date here of without any Extra Fee or commission.

Capital Stock, $1,000,000.00.

Five	Cipher	Two	Nine	Cipher
5	0	2	9	0
Cinco	Cero	Dos	Nueve	Cero

T. J. WANETO,
Manager.

MANUEL DIGHAS,
Commissioner.

The whole ticket on the other side as follows:

The International Mining and Investment Co.

This certificate will not be valid if pieced, mutilated, disfigured or in anyway cancelled or its number altered.

List of Dividends.

1	Capital Premium	$16,000	$16,000
1	" "	4,000	4,000
1	" "	2,000	2,000
1	" "	1,000	1,000
2	Premiums of	$500 each	1,000
5	" "	200 "	1,000
10	" "	100 "	1,000
25	" "	60 "	1,500
50	" "	40 "	2,000
100	" "	20 "	2,000
200	" "	10 "	2,000
300	" "	8 "	2,400
600	" "	5 "	3,000

15

Approximations.

100	Premiums of	$12	$1,200
100	" "	10	1,000
100	" "	8	800
100	" "	6	600

Terminals.

999	Premiums of	$5	$4,995
999	" "	4	3,996
999	" "	4	3,996
999	" "	2	1,998
5,692	Prem's, amounting to		$57,485

This Coupon is a duplicate of the original, the latter being retained at headquarters by the management of this company and at the consent of the holder hereof. Ample deposits will be retained in National Banks to enable local agents to promptly pay all dividends upon the surrender of said duplicate coupons.

Each of the half tickets on the one side as follows:

The International Mining and Investment Co.

Half Class. SAN DOMINGO, *December* 20, 1911.

50298 L U. S. Issue. 100,000 Coupons. Capital Coupons, $16,000

50 Cents. This is to certify that the holder hereof has paid the above named company the sum of 50 cents part payment on a half share of stock in said Company of the par value of One Hundred and Twenty Dollars per share being payable in monthly installments of one dollar each, this

certificate entitles the holder to such premium granted its number from said company if presented within ninety days from date here of without any extra fee or commission.

Capital Stock, $1,000,000.00.

Six	Cipher	Two	Seven	Cipher
6	0	2	7	0
Seis	Cero	Dos	Siete	Cero

T. J. WANETO,
Manager.

MANUEL DIGHAS,
Commissioner.

On the other side as follows, to-wit:

16 The International Mining and Investment Co.

This certificate will not be valid if pieced, mutilated, disfigured or in anyway cancelled or its number altered.

List of Dividends.

1	Capital Premium	$16,000	.....	$16,000
1	" "	4,000	.....	4,000
1	" "	2,000	.....	2,000
1	" "	1,000	.....	1,000
2	Premiums of	$500 each	.....	1,000
5	" "	200 "	.....	1,000
10	" "	100 "	.....	1,000
25	" "	60 "	.....	1,500
50	" "	40 "	.....	2,000
100	" "	20 "	.....	2,000
200	" "	10 "	.....	2,000
300	" "	8 "	.....	2,400
600	" "	5 "	.....	3,000

Approximations.

100	Premiums of	$12	.....	$1,200
100	" "	10	.....	1,000
100	" "	8	.....	800
100	" "	6	.....	600

Terminals.

999	Premiums of	$5	.....	$4,995
999	" "	4	.....	3,996
999	" "	4	.....	3,996
999	" "	2	.....	1,998
5,692	Prem's, amounting to		.....	$57,485

This Coupon is a duplicate of the original, the latter being retained at headquarters by the management of this company and at the consent of the holder hereof. Ample deposits will be retained in National Banks to enable local agents to promptly pay all dividends upon the surrender of said duplicate coupons.

17 And that the aforesaid tickets or coupons so deposited and caused to be deposited in the United States postoffice at Kansas City, Missouri, by the defendant as aforesaid to be mailed and delivered to the said J. P. Todd at Parsons, Kansas, as aforesaid, were transported and delivered by the postoffice establishment of the United States to the said J. P. Todd at Parsons, Kansas, and which said tickets or coupons purported to entitle the said J. P. Todd and the holder thereof to participate in the distribution of the alleged dividends and premiums to be paid to the holder or holders of certain tickets of the said The International Mining & Investment Company of San Domingo, and which alleged dividends and premiums were dependent upon lot and chance, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States.

18 On the said 24th day of April, A. D. 1912, the following entry appears of record, to-wit:

No. 3007.

UNITED STATES
vs.
FREMONT WEEKS.

This day comes Leslie J. Lyons, Esq., United States Attorney, who prosecutes on behalf of the United States, also comes the defendant Fremont Weeks in his own proper person as well as by his attorney Martin J. O'Donnell; thereupon the defendant being arraigned for plea says that he is not guilty as charged in the indictment, thereupon it is ordered that this case be continued until next term and that the defendant be allowed to depart on his present bond.

19 Afterwards on the 1st day of November, 1912, the following entry appears of record, to-wit:

No. 3007.

UNITED STATES
vs.
FREMONT WEEKS.

This day comes Leslie J. Lyons, United States Attorney, who prosecutes on behalf of the United States, also comes the defendant in his own proper person as well as by his attorney thereupon the

defendant withdraws his plea of not guilty heretofore made herein and enters a plea of nolo contendere and prays the court to accept the same, thereupon arguments of counsel are heard and the Court being fully advised in the premises it is ordered that said plea of nolo contendere be not accepted.

20 Afterwards, on the 6th day of November, 1912, the following entry appears of record, to-wit:

No. 3007.

UNITED STATES
vs.
FREMONT WEEKS.

This day comes defendant and files petition for the return of private papers, books and other property.

21 Said Petition to return private papers, books and other property, filed November 6th, 1912, is in words and figures as follows, to-wit:

In the District Court of the United States for the Western District of Missouri, at Kansas City, Missouri.

No. 3007.

UNITED STATES, Plaintiff,
vs.
FREMONT WEEKS, Defendant.

Petition to Return Private Papers, Books and Other Property.

Now comes defendant and states that he is a citizen and resident of Kansas City, Missouri, and that he resides, owns and occupies a home at 1834 Penn Street in said City:

That on the 21st day of December, 1911, while plaintiff was absent at his daily vocation certain officers of the government whose names are to plaintiff unknown, unlawfully and without warrant or authority so to do, broke open the door to plaintiff's said home and seized all of his books, letters, money, papers, notes, evidences of indebtedness, stock, certificates, insurance policies, deeds, abstracts, and other muniments of title, bonds, candies, clothes and other property in said home, and this in violation of Sections 11 and 23 *to* the Constitution of Missouri, and of the 4th and 5th Amendments to the Constitution of the United States:

That the District Attorney, Marshal and Clerk of the United States Court for the Western District of Missouri took the above described property so seized into their possession and have failed and refused to return to defendant portion of same, to-wit:

One (1) leather grip, value about $7.00; one (1) tin box
22 valued at $3.00; one (1) Pettis County, Missouri, bond, value $500.00; Three (3) Mining stock certificates which defendant is unable to more particularly describe valued at $12,000.00, and certain stock certificates in addition thereto issued by the San Domingo Mining Loan and Investment Company; about $75.00 in currency; one (1) newspaper published about 1790, an heirloom; and certain other property which plaintiff is now unable to describe:

That said property is being unlawfully and improperly held by said District Attorney, Marshal and Clerk in violation of defendant's rights under the Constitution of the United States and the State of Missouri:

That said District Attorney purposes to use said books, letters, papers, certificates of stock, etc., at the trial of the above entitled cause and that by reason thereof and of the facts above set forth defendant's rights under the amendments aforesaid to the Constitution of Missouri, and the United States have been and will be violated unless the Court order the return prayed for:

Wherefore, defendant prays that said District Attorney, Marshal and Clerk be notified, and that the Court direct and order said District Attorney, Marshal and Clerk to return said property to said defendant.

MARTIN J. O'DONNELL,
Attorney for Defendant.

STATE OF MISSOURI,
County of Jackson, ss:

Fremont Weeks, of lawful age being duly sworn upon his oath, states that he has read the above and foregoing motion, and that the facts therein set forth are true according to his best knowledge and belief.

FREMONT WEEKS.

Subscribed and sworn to before me this 6th day of November, 1912.

My commission expires April 20, 1916.

[SEAL.] EMMA POWERS,
Notary Public in and for Jackson County, Mo.

23 Afterwards, on the 7th day of November, 1912, the following entry appears of record, to-wit:

No. 3007.

UNITED STATES
vs.
FREMONT WEEKS.

This day comes Leslie J. Lyons, United States Attorney, who prosecutes on behalf of the United States also comes the defendant in his own proper person as well as by his attorney Martin J. O'Donnell,

thereupon the petition for the return of certain private papers, books and other property, heretofore filed herein, is by counsel argued and submitted to the court and the court being fully advised in the premises grants said petition relative to such property as is not pertinent to this trial and denies it concerning such property as is pertinent to the trial of this cause, the court reserving the right, however, to pass upon the pertinency at a later time; thereupon defendant being arraigned for plea says that he is not guilty as charged in the indictment herein; thereupon it is ordered that a jury come, to-wit:

Wm. W. Haines,	Dan'l O. Bell,
Walter B. Jones,	Coleman Wilks,
J. S. Schnelle,	Joseph M. Miller,
A. L. Perrin,	Isaac R. Smith,
Jesse E. Coleman,	Richard W. Broaddus,
Geo. E. Schiller,	Thomas R. Hughes,

twelve good and lawful men, who are duly empanelled and sworn to well and truly try the issues joined, thereupon the defendant by his attorney moves the court that the government be required to elect upon which counts in the indictment it will proceed; which motion is by the court overruled, and to which ruling of the court the defendant at the time excepts; thereupon evidence was heard and not being concluded at the hour of adjournment further proceedings are postponed until tomorrow morning.

24 On the said 7th day of November, 1912, a List of the Property Returned to Defendant and a List of the Property retained by the Plaintiff was filed in words and figures as follows, to-wit:

In the District Court of the United States for the Western Division of the Western District of Missouri.

UNITED STATES
vs.
FREMONT WEEKS.

Received from the United States District Attorney for the Western District of Missouri, of the property of Fremont Weeks, as follows:

Two lead pencils;
Three small pocket books;
One pad, orange color, Burlington Route;
One envelope addressed "B. E. Smith c/o Adams Express Co."
One envelope contents not marked, Safety Document File.
One blank book of notes, Fast Mail Line, out of which three blank notes have been taken;
Three book covers of Swift & Company;
One memoranda blank book, marked "Fremont Weeks, 718 W. Fourth St., Sedalia, Mo., Jan. 2, 1906.
One coupon Omnibus Transfer, Ills. Central Depot to Burlington Route;

One pass dated 4-30-1911, of the Chicago, Burlington & Quincy Railroad Company, No. 398,201.

Four coupon copies of receipts of Adams Company.

42 Blank envelopes;

Two envelopes addressed to Fremont Weeks, from P. H. Boler, Recorder of Deeds, Kansas City, Mo.:

One pad yellow paper, Burlington Route.

Certificate 10,000 shares of stock of the Old Mexico Mining & Milling Company, No. 496.

25 Certificates Nos. 515 and 516, of the Bonanza Gold Mining & Milling Company, of Leavenworth, Kansas.

Certificate No. 17 of the Pettis County Investment Company of Sedalia, Mo.

Accident policy, Industrial Policy No. 496,837, together with blank literature of the Accident Ins. Co. in envelope of Standard Accident Insurance Co.

Deed, Sedalia Cemetery Company, for Lots B and C, Block 41.

One note $600, dated March 11, 1901, signed by Weeks and wife;

One deed to Ollie Weeks, to land in Morris Co., Kansas.

One note, not signed, for $50, dated June 1, 1889, payable to the order of Walter Allison Weeks.

One Pacific Express Co. receipt No. 159,298.

One envelope containing personal receipts, marked, "Life Insurance Policies on life."

One envelope containing personal tax receipts.

One envelope addressed Fred Knoche, Express Co.

One bundle of private letters, recommendations, etc.

Received from Thad Landon, Esq. the above articles on this 7 day of November, 1912. But none of the under described.

MARTIN J. O'DONNELL,
Att'y for Def't.

And the District Attorney has retained in his possession the following:

One black hand grip;

One tin box;

One black wallet, containing $71 in one and $2 bills.

Ten memoranda books, pertaining to the lottery business;

31 packages of the tickets of the International Mining & Investment Company;

Bands taken from packages of lottery tickets loose in grip;

26 Sixteen official statement- of International Mining & Investment Company of San Domingo, giving list of drawings.

One memoranda book showing sales of tickets.

Letters written by J. W. Easley, John H. Kruse, H. M. Norton, Owen McKinney, J. T. Todd, pertaining to and ordering tickets similar to the ones above described.

Receipt of Frank Reitz, 605 Washington, Kansas City, Kans. for the sum of $1,000, prize for lottery ticket.

Letters written by one Sims, addressed to Mr. Freemont Weeks, and pertaining to the sale of the tickets above described.

All of which last above described property is to be used in evidence in the trial of the above entitled cause, and pertains to the alleged sale of lottery tickets of the company above named.

27 Afterwards on the 8th day of November, 1912, the following entry appears of record, to-wit:

No. 3007.

UNITED STATES
vs.
FREMONT WEEKS.

This day again comes Leslie J. Lyons, United States Attorney, also comes the defendant Fremont Weeks in his own proper person as well as by his attorney Martin J. O'Donnell, thereupon the hearing of evidence on behalf of the Government is resumed, at the conclusion of which, on motion of the District Attorney it is ordered that a Nolle Prosequi be entered as to counts one, three and five of the indictment, thereupon the defendant, by his attorney presents a demurrer to the evidence and moves the court for a peremptory instruction in favor of the defendant on the remaining counts in the indictment, arguments of counsel are heard and the court being fully advised in the premises overrules said demurrer as to counts two, six and seven and sustains said demurrer as to counts four, eight and nine of the indictment, thereupon on motion of the District Attorney it is ordered that a Nolle Prosequi be entered as to said counts four, eight and nine of the indictment, thereupon evidence on behalf of the defendant is heard and concluded, arguments of counsel are made, and the hour of adjournment having arrived further proceedings are postponed until tomorrow morning.

28 Afterwards, on the 9th day of November, 1912, the following entry appears of record, to-wit:

No. 3007.

UNITED STATES
vs.
FREMONT WEEKS.

This day again comes Leslie J. Lyons, United States Attorney, also comes the defendant Fremont Weeks, in his own proper person as well as by his attorney Martin J. O'Donnell; thereupon the jury after hearing the charge of the court retire to consider what verdict they shall render in the premises; whereupon said jurors after due deliberation return into court the following verdicts to-wit:

"We, the jury, find the defendant, Fremont Weeks, not guilty as charged in the second count of the indictment herein.

J. M. MILLER, *Foreman.*"

"We, the jury, find the defendant, Fremont Weeks, not guilty as charged in the sixth count of the indictment herein.

J. M. MILLER, *Foreman.*"

"We, the jury, find the defendant, Fremont Weeks, guilty as charged in the seventh count of the indictment herein.

J. M. MILLER, *Foreman.*"

thereupon this case is continued for sentence and the defendant allowed to depart on his present bond.

29 Afterwards, on the 14th day of November, 1912, the following entry appears of record, to-wit:

No. 3007.

UNITED STATES
vs.
FREMONT WEEKS.

This day comes defendant by his attorney and files motion in arrest of judgment and motion for a new trial.

30 Afterwards, on the 16th day of November, 1912, the same being a day of the regular November Term of said Court, the following entry appears of record, to-wit:

No. 3007.

UNITED STATES
vs.
FREMONT WEEKS.

This day comes Leslie J. Lyons, United States Attorney, who prosecutes on behalf of the United States, also comes the defendant Fremont Weeks in his own proper person as well as by his attorney Martin J. O'Donnell, thereupon the motion in arrest and motion for new trial, heretofore filed herein were by the Court overruled; thereupon the District Attorney moves that sentence now be pronounced upon said defendant; thereupon said defendant was called upon to state reasons if any he has, why sentence should not now be pronounced upon him, and none being stated:

It is considered, ordered and adjudged by the court that the said defendant Fremont Weeks be confined in the Johnson County jail at Warrensburg, Missouri, for a period of six (6) months from this date and that commitment issue.

It is further ordered that said defendant Fremont Weeks pay a fine of one hundred dollars ($100.00) together with the costs of this action and that he stand committed until said fine and costs are paid.

Whereupon the defendant Fremont Weeks by his counsel Martin

J. O'Donnell files his assignment of errors together with the petition for writ of error, citation, supersedeas and approval of appearance bond on writ of error to the Supreme Court of the United States, which petition is duly sustained and a writ of error in open court is allowed by the court to the Supreme Court of the United States, and thereupon the Court fixes the amount of bond for said defendant to give in the amount of Two Thousand Dollars ($2000.00)
31 signed by himself as principal and by Maude E. Roark and Cecil L. Roark as sureties, which said bond is thereupon examined and approved by the court filed and ordered to act as supersedeas herein.

Thereupon citation is duly issued and signed by the Court admonishing the United States to be and appear at the Supreme Court of the United States in Washington, D. C., thirty days from and after the day this citation bears date, service of which said citation was made by delivering a true copy of the same to the District Attorney and the same is filed herein.

It is further ordered that the said defendant have thirty (30) days from this day to file his Bill of Exceptions.

32 Said Petition for Writ of Error, filed November 16th, 1912, is in words and figures as follows, to-wit:

In the District Court of the United States for the Western Division of the Western District of Missouri.

No. 3007.

UNITED STATES, Plaintiff,
vs.
FREMONT WEEKS, Defendant.

Petition for Writ of Error.

And now comes Fremont Weeks, defendant herein, and says that on the 16th day of November, 1912, this court entered judgment herein in favor of plaintiffs and against defendant and further that it pronounced sentence on defendant, in which judgment and the proceedings prior thereunto in this cause certain errors were committed to the prejudice of defendant, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore, this defendant prays that a writ of error may issue in this behalf out of the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers in the case duly authenticated, may be sent to the said Supreme Court of the United States.

MARTIN J. O'DONNELL AND
HARRY FARRABEE,
Attorneys for Defendant.

33 Said Assignment of Errors, filed November 16th, 1912, is in words and figures as follows, to-wit:

In the District Court of the United States for the Western Division of the Western District of Missouri.

No. 3007.

UNITED STATES, Plaintiff,
vs.
FREMONT WEEKS, Defendant.

Assignment of Errors.

Now comes into court here the said Fremont Weeks in his own proper person and by attorney and says that in the record and proceedings aforesaid, there is manifest error, in this,

(1) That the indictment aforesaid and the matter therein contained are not sufficient in law to warrant the judgment against him now given, or to convict him of the charge set forth in the seventh count of the indictment.

(2) That the indictment aforesaid and the seventh count thereof are not sufficient in law to warrant the judgment against him now given or to convict him of any crime or offense against the law of the United States.

(3) That the court refused to order the return of the property described in the following motion, which motion was duly filed herein and denied by the court at the trial of this cause and defendant was thereby denied the rights, privileges and immunities guaranteed to him by the fourth and fifth amendments to the Constitution of the United States and particularly those guaranteed to him by that part of the said fourth amendment by which it is provided that, "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated," and those guaranteed to him by

34 that part of said fifth amendment by which it is provided that "No person * * * shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation." Which said motion for return of property is as follows:

(Omitting Caption.)

Now comes defendant and states that he is a citizen and resident of Kansas City, Missouri, and that he resides owns and occupies a home at 1834 Penn Street in said City;

That on the 21st day of December, 1911, while plaintiff was absent at his daily avocation certain officers of the government whose names are to plaintiff unknown, unlawfully, and without warrant or authority so to do, broke open the door to plaintiff's said home and

seized all of his books, letters, money, papers, notes, policies, deeds, abstracts, and other muniments of title, bonds, candies, clothes and other property in said home, and this in violation of Sections 11 and 23 to the Constitution of Missouri, and of the 4th and 5th amendments to the Constitution of the United States;

That the District Attorney, Marshal and Clerk of the United States Court for the Western District of Missouri took the above described property so seized into their possession and have failed and refused to return to defendant portion of same, to-wit:

One (1) leather grip value about $7.00; one (1) tin box valued at $3.00; one (1) Pettus County, Missouri, bond value $500.00; Three (3) mining stock certificates which defendant is unable to more particularly describe valued at $12,000.00; and certain stock certificates in addition thereto issued by the San Domingo Mining Loan and Investment Company; about $75.00 in currency; one (1) newspaper published about 1790, an heirloom; and certain other property which plaintiff is now unable to describe;

That said property is being unlawfully and improperly held by said District Attorney, Marshal and Clerk in violation of defendant's rights under the Constitution of the United States and the State of Missouri;

That said District Attorney purposes to use said books, letters, papers, certificates of stock, etc., at the trial of the above entitled cause and that by reason thereof and of the facts above set forth defendant's rights under the amendments aforesaid to the Constitution of Missouri, and the United States have been and will be violated unless this court order the return prayed for;

Wherefore, defendant prays that said District Attorney, Marshal and Clerk be notified, and that the Court direct and order said District Attorney, Marshal and Clerk to return said property to said defendant.

(Signed) MARTIN J. O'DONNELL,
Attorney for Defendant.

35 STATE OF MISSOURI,
County of Jackson, ss:

Fremont Weeks, of lawful age being duly sworn, upon his oath states that he has read the above and foregoing motion, and that the facts therein set forth are true according to his best knowledge and belief.

(Signed) FREMONT WEEKS.

Subscribed and sworn to before me this 6th day of November, 1912.

My commission expires April 20, 1916.

EMMA POWERS,
Notary Public in and for Jackson County, Mo.

Said motion is endorsed, "Filed November 6, 1912, John B. Warner, Clerk." To the Court's ruling on said motion defendant excepted.

(4) That the Court, over defendant's objection and exception thereto, admitted exhibits marked 1 to 618 inclusive in evidence, same being the property, books, papers and effects described in the motion set forth in the third assignment of error herein, and more particularly exhibits 2 to 18 inclusive, said exhibits consisting of letters unreasonably and unlawfully seized and taken from defendant's home by officers of the government and by the Marshal of the United States for the Western Division of the Western District of Missouri, who broke into said home without a search warrant or other lawful authority and unlawfully seized said letters, taking same from defendant's chiffonier; said letters being addressed to defendant and written by one J. P. Todd and J. W. Easley, from Parsons, Kansas, Owen McKinney from Brookfield, Missouri, H. M. Norton from Council Grove, Kansas, and John H. Kruse from Sedalia Missouri; said letters containing requests or orders for whole, half and quarter tickets and referring to money enclosed and asking that defendant forward such tickets to said above named persons; said exhibit No. 3 being in words and figures as follows:—

PARSONS, KANSAS, *Sep.* 17, '11.

"Mr. Fremont Weeks.

36 DEAR FRIEND: Enclosed find one dollar for which send me one whole or two halves and oblige,

J. P. TODD,
700 *N. Central, Parsons, Kansas.*"

Said exhibit number 5 being words and figures as follows:

PARSONS, KANSAS, *Dec.* 18, '11.

"Mr. Fremont Weeks, Kansas City, Missouri:

Enclosed find one dollar for one whole, I cannot understand what happened to the other one you sent last month as we received only one.

Wishing you a Merry Xmas & Happy New Year, I am your- Resp.

J. P. TODD,
700 *N. Central, Parsons, Kansas.*"

Said exhibit number 20 is in form, words and figures except as to date and number similar to the tickets set out in the seventh count of the indictment; the other exhibits above mentioned and not hereinafter described being nearly all tickets similar excepting in dates and numbers to the tickets set out in the seventh count of the indictment; and to the introduction of said exhibits and all of them defendant made the following objection:—

"Defendant objects to the introduction of the articles in question, for the reason that it appears from the testimony of the witnesses, and also from the motion heretofore filed and passed upon by the Court, that all of these papers and this property was seized by officers of the Government without a search warrant, by breaking open the home of the defendant, Mr. Weeks, and thereby violating his rights to be secure from unreasonable searching and seizures, and violating

his right not to be compelled to give testimony against himself, in contravention of the provisions of the Fourth and Fifth amendments of the Constitution of the United States, and Sections Eleven and Twenty-three of Article Two of the Constitution of the State of Missouri."

Which said objection was by the court overruled to which ruling defendant then and there excepted and still excepts.

(5) That the court forced defendant to go to trial on the nine counts cintained in the indictment and overruled his motion praying that the government be required to elect between the counts charging the sending of lottery tickets by express companies
37 and by the mails on the ground that a different character of proof would be required to support or combat the said respective counts and that different penalties and punishments attached thereto, to which ruling defendant excepted at the time.

(6) That at the close of the evidence on the part of the United States the court overruled defendant's motion asking for the direction of the verdict and the discharge of the defendant upon the ground that the evidence adduced by the government was not sufficient to establish the government's case upon any of the counts of the indictment, to which ruling the defendant excepted at the time.

(7) That the court submitted the case to the jury upon counts two, six and seven of the indictment, to which ruling defendant objected and excepted at the time.

(8) That the court overruled defendant's motion praying that the Government be required to elect between counts two, six and seven of the indictment at the close of the testimony on the part of the United States, to which ruling defendant excepted.

(9) That the court denied the following request at the close of the evidence on the part of the United States:—

"The defendant requests the court to charge the jury as follows:—

The court instructs the jury that you must find the defendant not guilty of the charges contained in count seven of the indictment."

To which ruling the defendant excepted.

(10) That the Court denied the following request of defendant at the close of all the testimony:

"At the close of all the testimony defendant requests the court to charge the jury as follows:

The jury are instructed that you must find the defendant not guilty of the charge contained in count seven of the indictment."

To which ruling defendant excepted.

(11) That the court refused all of the charges to the jury requested by defendant, and more particularly the following:—
38 "The court instructs the jury that the evidence in this case is wholly circumstantial and you are further instructed as a matter of law that where a conviction for a criminal offense is sought upon circumstantial evidence alone, the prosecution must not only show beyond a reasonable doubt that the alleged facts and circumstances as are absolutely incompatible, upon any reasonable hypothesis, with the innocence of the accused, and incapable of explanation upon any reasonable hypothesis other than that of the guilt of the

accused and if the prosecution has not so shown you must acquit the defendant."

"The court instructs the jury that the evidence of an accomplice in a crime when not corroborated by some person or persons not implicated in crime as to matters material to the issues—that is, connecting defendant with the commission of the crime charged against him—ought to be received by you with great caution and in the absence of such corroboration you cannot convict defendant on such testimony."

"You are instructed that by his own admission the witness Todd is an accomplice, and unless you find from the evidence beyond a reasonable doubt that his testimony concerning the receipt of lottery tickets as herein defined by the court show- beyond a reasonable doubt that he received same by mail on or about September 17, 1911, and shows beyond a reasonable doubt that said tickets were deposited in the mails on or about said date by defendant at Kansas City, Missouri, and unless you find beyond a reasonable doubt that said testimony has been corroborated by the testimony of some person or persons not connected with said specific transaction, then you will not consider the testimony of said witness on that question and find defendant not guilty of the charge contained in Count Seven of the indictment."

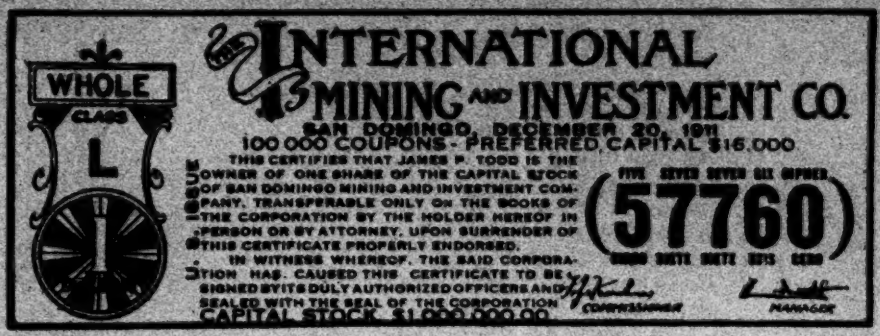
"The Court instructs the jury that even though you find from the evidence that defendant shipped tickets to the witness Todd by mail and the American Express Company, yet you are instructed that under the evidence it was impossible for defendant to have shipped said tickets by mail and by express, and if you have a reasonable doubt as to which method, if either, was used by defendant in shipping the tickets to said Todd then you must find defendant not guilty on Counts two and seven of the indictment."

"The court instructs the jury that if you find from the evidence that the persons entitled to the dividends, premiums or prizes referred to in the tickets introduced in evidence were selected either by lot or chance before transmission to the purchasers, or if there is a reasonable doubt in your minds concerning the facts herein set forth then defendant is not guilty on any count and you must so find in your verdict."

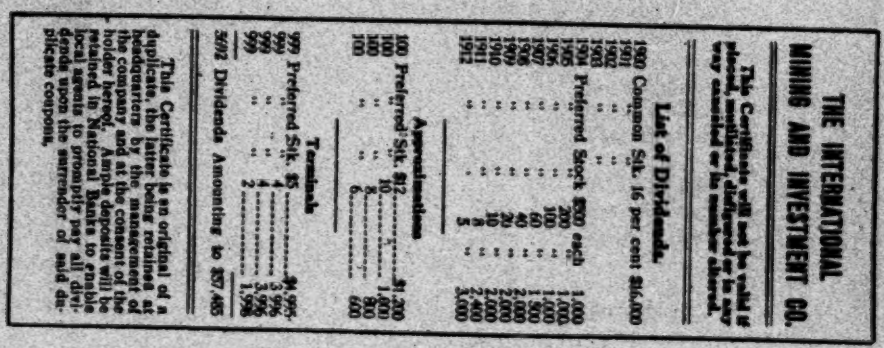
"The court instructs the jury that the burden of proof to establish the guilt of defendant rests upon the prosecution, and the defendant is presumed to be innocent of the charge against him, and this presumption of innocence attends and protects him throughout the trial until overcome by evidence every fact necessary to constitute the crime charged beyond a reasonable doubt, and if the
39 jury entertains any reasonable doubt on any single fact or element necessary to constitute the crime, it is your duty to give defendant the benefit of such doubt and acquit him."

"The court instructs the jury that if you do not know and are unable to ascertain from the evidence beyond a reasonable doubt as to whether or not the parties entitled to the premiums, dividends or prizes mentioned in the tickets introduced in evidence were ascertained by design or chance, then in that event you must find defendant not guilty on each count of the indictment."

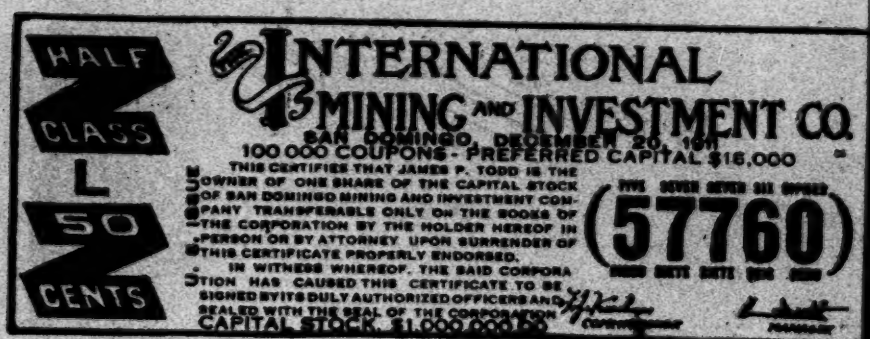
Face of one whole or dollar ticket:



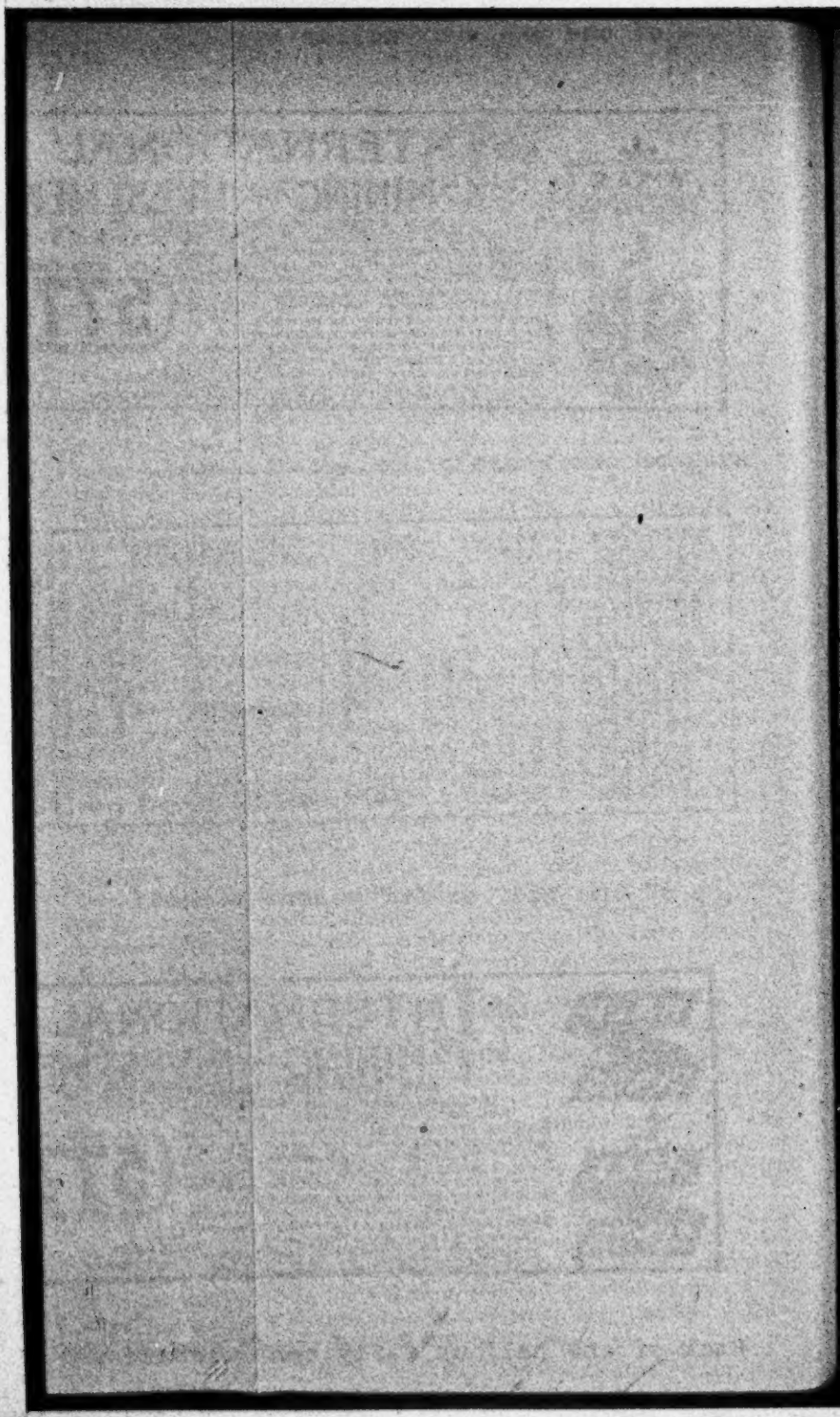
Back of one whole or dollar ticket:



Face of one half or fifty cent ticket:



Back of one half or fifty cent ticket:



Face of quarter or twenty-five cent ticket:

Back of quarter or twenty-five cent ticket:

THE INTERNATIONAL
MINING AND INVESTMENT CO.

The Certificate will not be valid if altered, mutilated, defaced or in any way exceeded or its number altered.

List of Dividends.

1900	Coupon Sgt. 16 per cent	$16,000	
1901	" "		
1902	" "		
1903	" "		
1904	Preferred Stock	$50 each	1,000
1905	" "	200	1,000
1906	" "	100	1,000
1907	" "		1,500
1908	" "		2,000
1909	" "		2,000
1910	" "		2,000
1911	" "		2,400
1912	" "		3,000

Appreciations

100	Preferred Sgt. $12	$1,200
100	" " 10	1,000
100	" " 8	800
100	" " 6	600

Terminals

999	Preferred Sgt. $5	$4,995
999	" " 4	3,996
999	" " 4	3,996
999	" " 2	1,998
5692	Dividends Amounting to	$57,485

This Certificate is an original of a duplicate, the latter being retained at headquarters by the management of the company and at the consent of the holder hereof. Ample deposits will be retained in National Banks to enable local agents to promptly pay all dividends upon the surrender of said duplicate coupons.

THE INTERNATIONAL
MINING AND INVESTMENT CO.

The Certificate will not be valid if altered, mutilated, defaced or in any way exceeded or its number altered.

List of Dividends.

1900	Coupon Sgt. 16 per cent	$16,000	
1901	" "		
1902	" "		
1903	" "		
1904	Preferred Stock	$50 each	1,000
1905	" "	200	1,000
1906	" "	100	1,000
1907	" "		1,500
1908	" "		2,000
1909	" "		2,000
1910	" "		2,000
1911	" "		2,400
1912	" "		3,000

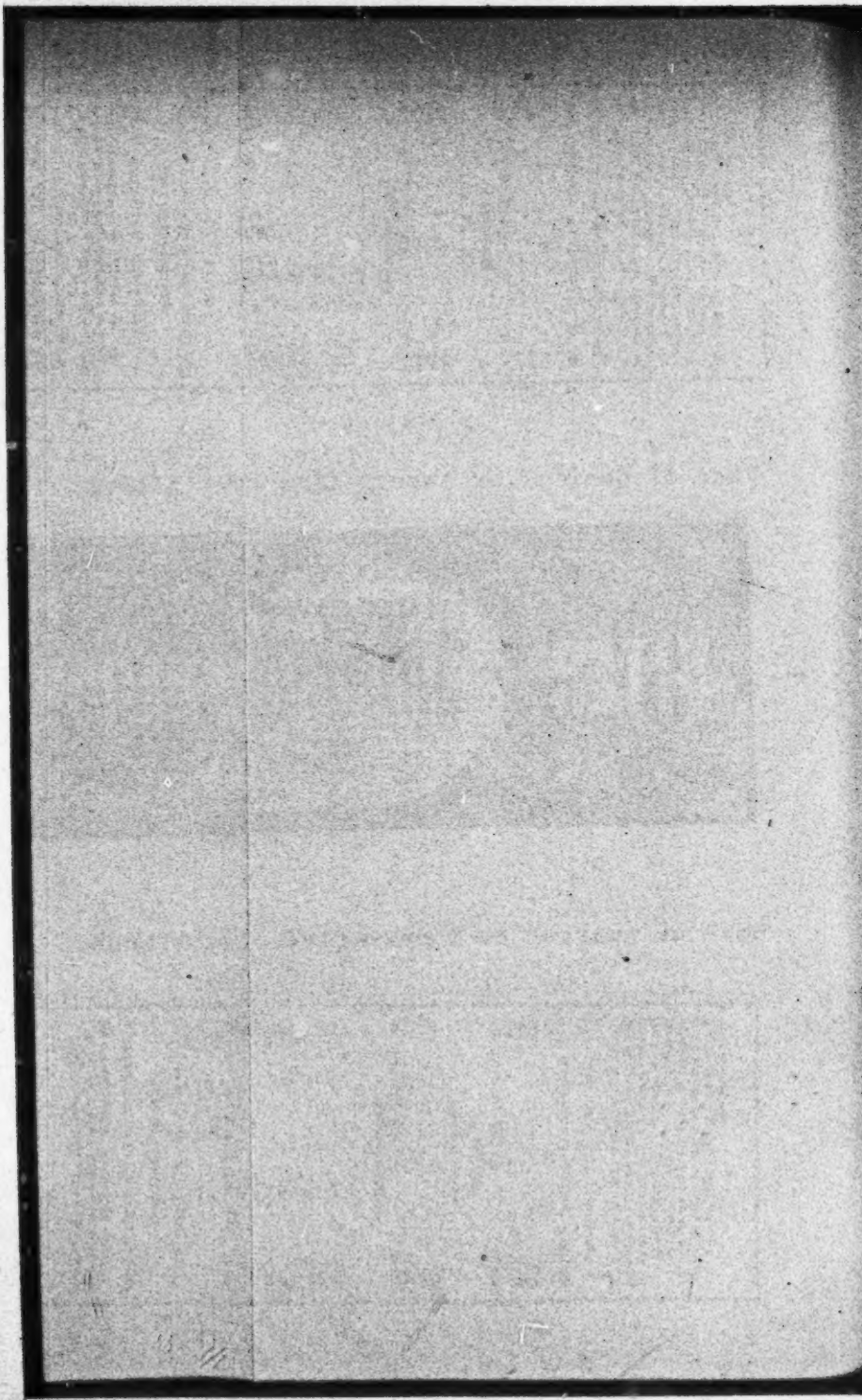
Appreciations

100	Preferred Sgt. $12	$1,200
100	" " 10	1,000
100	" " 8	800
100	" " 6	600

Terminals

999	Preferred Sgt. $5	$4,995
999	" " 4	3,996
999	" " 4	3,996
999	" " 2	1,998
5692	Dividends Amounting to	$57,485

This Certificate is an original of a duplicate, the latter being retained at headquarters by the management of the company and at the consent of the holder hereof. Ample deposits will be retained in National Banks to enable local agents to promptly pay all dividends upon the surrender of said duplicate coupons.



"The court instructs the jury that the defendant has given evidence of having given tickets for carriage and transportation to employees of railroads and express companies, and that he always used that method of sending tickets, and if you find that the tickets in question were those sent to witnesses Todd and Easley you must acquit defendant, and in connection with said testimony you are instructed that you should take into consideration the evidence of the witnesses on the part of the Government showing the customary method, if any, employed by defendant in the transmission of tickets and that this testimony is corroborative of that of defendant, and if all of said testimony raises a reasonable doubt in your minds as to whether or not defendant followed said customary method in the transmission of said tickets, then you must acquit defendant."

"The court instructs the jury that even though you find from the evidence that the tickets alleged by the Government to be lottery tickets are in fact such, yet if there is a reasonable doubt in your minds that said tickets do not purport to be that which you may find they are, that is to say, if there is nothing on said tickets showing that the persons entitled to the dividends, premiums, and prizes were to be ascertained by chance after being sent to the purchasers thereof, then and in that event the transmission of said tickets by mail or express constitutes no crime under the law and you must find defendant not guilty on every count."

"The court instructs the jury that witnesses Easley and Todd have testified that exhibits "F" "G" and "H" are copies of the tickets in question excepting dates and numbers, and if you believe said testimony you must acquit defendant on every count."

To which refusal defendant excepted at the time.

(12) That the verdict rests on the testimony of an accomplice.

(13) That there is a variance between the pleading and proof in that the witness Todd, on whose testimony alone the verdict rests, testified that exhibits "F" "G" and "H" were, excepting as to dates and numbers, exact duplicates of the tickets received by him through the mail and express from defendant. An examination of
40 such tickets discloses that they are different from those set out in the indictment. Said exhibits "F" "G" and "H" being in form, words and figures as follows:—

(Here follow fac-similes marked pages 40 and 41.)

(14) That the Court charged the jury as follows:—

"The testimony with respect to the mail is that the witness Todd says that he wrote for these tickets and enclosed some money for them, and that he received the tickets; and he further says that he received them by mail on September 17, 1911, on or about that date. It is not necessary for it to be on that day. That is about the time disclosed in his letter here that he received the tickets; and he says he received them by mail; he says that the reason for his saying that was that he always received his tickets by mail—except, perhaps, on two occasions—when, on two occasions, once several years before, and once about December, 18th, he received them by express. Now the Post Office Inspector says that the
42 defendant told him in the presence of the United States Attorney, when questioned about that, that he had sent these tickets in response to this letter to Mr. Todd; so that it seems to be fairly well established that the tickets were sent from Kansas City, Missouri, to Parsons, Kansas, and on or about the date specified; and the Inspector says that the defendant stated that he sent them by express. You have heard the testimony about that; the Inspector testified that he said, by American Express. Now, therefore, it is in testimony that the tickets were sent at different times, some times by mail and some times by express, and the question for you to determine now is, what, in your opinion was done in this instance. The defendant took the stand in his own behalf and was asked in what manner he sent these tickets—not these tickets, the particular tickets—but generally to Todd and Easley; and his answer was this: 'I most always gave them to a messenger on the road.' Now what he did on the times other than 'most always', he does not state. So there you have the statement, now, of the defendant on the stand; you have the testimony of the Post Office Inspector as to what he says the defendant told him at the time when they questioned him. You have the testimony of Mr. Todd as to how he received the tickets, and you have all the other testimony in the case."

And this notwithstanding that the Post Office Inspector Sharon did not testify as stated in said charge, to which portion of the charge defendant excepted at the time on the ground that same was a misrecital of the evidence and mininstruction of the jury. Defendant excepted to the above portion of said charge.

(15) That the charge to the jury by the court failed to advise them that the evidence was wholly circumstantial and that in order to warrant a verdict of guilty the evidence must exclude any hypothesis, except the hypothesis of defendant's guilt on the specific charges submitted, on which ground defendant excepted to the charge of the court.

Wherefore, the said Fremont Weeks prays that the judgment aforesaid may be reversed, annulled and altogether held for nothing, and that he may be restored to all things he has lost by said judgment and sentence.

MARTIN J. O'DONNELL,
HARRY FARRABEE,
Attorneys for Defendant.

43 On the said 16th day of November, an Order Allowing Writ of Error was filed in words and figures as follows, to-wit:

In the District Court of the United States for the Western Division of the Western District of Missouri.

No. 3007.

UNITED STATES, Plaintiffs,
vs.
FREMONT WEEKS, Defendant.

Order Allowing Writ of Error.

This 16th day of November, 1912, came the defendant and filed herein and presented to the court his petition, praying for the allowance of a writ of error, an assignment of errors intended to be urged by him, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered duly authenticated may be sent to the Supreme Court of the United States of America and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof, the court does allow the writ of error upon the defendant giving bond according to law in the sum of Two Thousand — which shall operate as a supersedeas bond.

ARBA S. VAN VALKENBURGH,
District Judge.

44 On the said 16th day of November 1912, the Order Fixing Amount of Bail Bond was filed in words and figures as follows, to-wit:

In the District Court of the United States for the Western Division of the Western District of Missouri.

No. 3007.

UNITED STATES, Plaintiffs,
vs.
FREMONT WEEKS, Defendant.

Order Fixing Amount of Bail Bond.

It appearing that writ of error has been sued out in this case by the defendant, returnable to the Supreme Court of the United States from the judgment made and entered by the above District Court on the 16th day of November, 1912,

And it appearing that the United States Attorney has no objection,

Ordered, that defendant be admitted to bail pending said writ of error in the sum of Two Thousand Dollars conditioned as the law directs.

ARBA S. VAN VALKENBURGH,
United States District Judge.

I have no objection to the above and foregoing order.

____ ____,
United States Attorney.

45 On the said 16th day of November, 1912, the Supersedeas Bond of Defendant was filed, in words and figures as follows, to-wit:

Bail Bond Pending Writ of Error.

THE UNITED STATES OF AMERICA,
Western District of Missouri, ss:

We, Fremont Weeks, Maud E. Roark, Cecil L. Roark, jointly and severally, acknowledge ourselves indebted to the United States of America, in the penal sum of Two Thousand Dollars to be levied on our, and each of our goods, chattels, lands and tenements, upon this condition:

Whereas, the said Fremont Weeks has sued out a writ of error from the judgment of the District Court of the United States for the Western Division of the Western District of Missouri, in the case where the United States of America are plaintiffs and said Fremont Weeks is defendant for a review of said judgment in the Supreme Court of the United States:

Now, if the said Fremont Weeks shall appear and surrender himself in the District Court of the United States for the Western Division of the Western District of Missouri on and after the filing in the said District Court of the mandate of the said Supreme Court of the United States, and from time to time thereafter as he may be required to answer any further proceedings, and abide by and perform any judgment or order which may be had or rendered therein in this case, and shall abide by and perform any judgment or order which may be rendered in said Supreme Court of the United States and not depart from said District Court without leave thereof, then this obligation shall be void; otherwise to remain in full force and virtue.

Witness our hands and seals this 16th day of November, 1912.

FREMONT WEEKS.
MAUDE E. ROARK.
CECIL L. ROARK.

46 Taken and approved this 16th day of November, 1912, before me, and ordered to act as supersedeas.

ARBA S. VAN VALKENBURGH,
District Judge.

UNITED STATES OF AMERICA,
Western District of Missouri, ss:

Fremont Weeks obligor in the within bond, being duly sworn, on his oath deposes and says, that he resides as stated therein, and is worth, over and above all his debts and liabilities the sum of Two Thousand dollars; and that he owns property to that amount, subject to execution, in the State of Missouri.

FREMONT WEEKS.

Subscribed and sworn to before me this 16th day of November, A. D. 1912.

[SEAL.] EMMA POWERS,
Notary Public, Jackson County, Mo.

UNITED STATES OF AMERICA,
Western District of Missouri, ss:

Maude E. Roark obligor in the within bond, being duly sworn, on *his* oath deposes and says, that he resides as stated therein, and is worth, over and above all *his* debts and liabilities, the sum of Fifteen Hundred dollars; and that he owns property to that amount, subject to execution, in the State of Missouri.

MAUDE E. ROARK.

Subscribed and sworn to before me this 16th day of November, A. D. 1912.

[SEAL.] EMMA POWERS,
Notary Public, Jackson County, Mo.

47 UNITED STATES OF AMERICA,
Western District of Missouri, ss:

Cecil L. Roark, obligor in the within bond, being duly sworn, upon his oath deposes and says, that he resides as stated therein, and is worth, over and above all his debts and liabilities, the sum of Fifteen undred dollars; and that he owns property to that amount, subject to execution, in the State of Missouri.

CECIL L. ROARK.

Subscribed and sworn to before me this 16th day of November, A. D. 1912.

[SEAL.] EMMA POWERS,
Notary Public, Jackson Co., Mo.

48 Afterwards, on the 10th day of December, 1912, the following order was filed and recorded in words and figures as follows, to-wit:

In the District Court of the United States for the Western Division of the Western District of Missouri.

No. 3007.

FREMONT WEEKS, Plaintiff in Error,
vs.
UNITED STATES, Defendant in Error.

Order Extending Time for Filing Transcript of Record.

For good cause shown the time for filing transcript of the record in the above entitled cause in the Supreme Court of the United States is hereby extended to the 16th day of January, 1913.
Dec. 7/12.

ARBA S. VAN VALKENBURGH,
Judge of the District Court of the United States for the Western Division of the Western District of Missouri.

49 Afterwards, on the 19th day of December, 1912, the following entry appears of record, to-wit:

No. 3007.

UNITED STATES
vs.
FREMONT WEEKS.

This day comes defendant by his attorney Martin O'Donnell, Esq., and files Bill of Exceptions herein, which is ordered to be made a part of the record herein.
Said Bill of Exceptions, filed December 19th, 1912, is in words and figures as follows, to-wit:

50 In the District Court of the United States for the Western Division of the Western District of Missouri.

No. 3007.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
FREMONT WEEKS, Defendant.

Defendant's Bill of Exceptions.

Be it remembered, that on the 7th, day of November, 1912, at the regular November Term, 1912, of the District Court of the United States for the Western Division of the Western District of Missouri, at Kansas City, the above entitled cause came on to be

heard before the Honorable A. S. Van Valkenburgh, Judge, and a jury; and thereupon the following proceedings were had and taken, and evidence heard and offered:

Appearances.

The Government appeared by Thaddeus B. Landon, Esq., Assistant United States Attorney. The Defendant appeared in person and by his attorney, Martin J. O'Donnell, Esq.

After the jury was sworn, and counsel for the Government and for the defendant, respectively, had addressed the jury in opening statements, the following evidence was introduced and offered on the part of the Government:

Testimony for the Government.

Mr. O'DONNELL: I have filed a motion on which there has been no ruling.

The COURT: The motion is for the return of this property.

Petition to Return Private Papers, Books and Other Property.

Now comes defendant and states that he is a citizen and
51 resident of Kansas City, Missouri, and that he resides, owns, and occupies a home at 1834 Penn Street in said City;

That on the 21st day of December, 1911, while plaintiff was absent at his daily avocation certain officers of the Government whose names are to the plaintiff unknown, unlawfully and without warrant of authority so to do, broke open the door to plaintiff's said home and seized all of his books, letters, money, papers, notes evidence of indebtedness, stock, certificates, insurance policies, deeds, abstracts, and other muniments of title, bonds, candies, clothes and other property in said home, and this in violation of section- 11 and 23 *to* the Constitution of Missouri, and of the 4th and 5th Amendments to the Constitution of the United States;

That the District Attorney, Marshal and Clerk of the United States Court for the Western District of Missouri took the above described property so seized into their possession and have failed and refused to return to defendant portions of same, to-wit:

One (1) leather grip, value of about $7.00; One (1) tin box valued at $3.00; One (1) Pettis County, Missouri, bond, valued at $500.00; Three (3) mining stock certificates which defendant is unable to more particularly describe valued at $12,000.00 and certain stock certificates in addition thereto issued by the San Domingo Mining Loan and Investment Company; about $75.00 in currency; One (1) newspaper published about 1790, an heirloom; and certain other property which plaintiff is now unable to describe;

That said property is being unlawfully and improperly held by said District Attorney, Marshal, and Clerk in violation of defend-

ant's rights under the Constitution of the United States and the State of Missouri;

That said District Attorney purposes to use said books, letters, papers, certificates of stock, etc., at the trial of the above entitled cause and that by reason thereof and of the facts above set forth defendant's rights under the amendments aforesaid to the Constitution of Missouri, and the United States have been and will be violated unless this Court order the return prayed for;

52 Wherefore, defendant prays that said District Attorney, Marshal and Clerk be notified, and that the Court direct and order said District Attorney, Marshal and Clerk to return said property to said defendant.

(Signed) MARTIN J. O'DONNELL,
Attorney for Defendant.

STATE OF MISSOURI,
County of Jackson, ss:

Fremont Weeks, of lawful age, being duly sworn upon his oath, states that he has read the above and foregoing motion, and that the facts therein set forth are true according to his best knowledge and belief.

(Signed) FREMONT WEEKS.

Subscribed and sworn to before me this 6th day of November, 1912.

My commission expires April 20, 1916.

[L. S.] EMMA POWERS,
Notary Public in and for Jackson County, Mo.

The list of property returned to the defendant and the list of property retained by the District Attorney *is* in words and figures as follows, to-wit:

In the District Court of the United States for the Western Division of the Western District of Missouri.

UNITED STATES
vs.
FREMONT WEEKS.

Received from the United States District Attorney for the Western District of Missouri, of the property of Fremont Weeks, as follows:

Two lead pencils.
Three small pocket books.
One pad, orange color, Burlington Route.
One envelope addressed "B. E. Smith, c/o Adams Express Co."
One envelope contents not marked, Safety Document File.
One blank book of notes, Fast Mail Line, out of which three blank notes have been taken.

Three book covers of Swift & Company.
One memoranda blank book, marked "Fremont Weeks 718 W., Fourth St. Sedalia, Mo., Jan. 2, 1906.
53 One coupon Omnibus Transfer, Ills. Central Depot to Burlington Route.
One pass dated 4-30-1911, of Chicago, Burlington & Quincy Railroad Company, No. 398,201.
Four coupon copies of receipts of Adams Company.
42 blank envelopes.
Two envelopes addressed to Fremont Weeks, from P. H. Boler, Recorder of Deeds, Kansas City, Mo.
One pad yellow paper Burlington Route.
Certificate XX 10,000 shares of stock of the Old Mexico Mining & Milling Company, No. 496.
Certificates Nos. 515 and 516, of the Bonanza Gold Mining & Milling Company, of Leavenworth, Kansas.
Certificate No. 17 of the Pettis County Investment Company of Sedalia, Mo.
Accident policy, Industrial Policy No. 496,837, together with blank literature of the Accident Ins. Co. in envelope of Standard Accident Insurance Co.
Deed, Sedalia Cemetery Company, for lots B and C, Block 41.
One note $600.00 dated March 11, 1901, signed by Weeks and wife.
One deed to Ollie Weeks, to land in Morris Co., Kansas.
One note not signed for $50.00 dated June 1, 1889, payable to the order of Walter Allison Weeks.
One Pacific Express Co. receipt No. 159,298.
One envelope containing personal receipts, marked "Life Insurance Policies on life."
One envelope containing personal tax receipts.
One envelope addressed Fred Knoche, Express Co.
One bundle of private letters, recommendations, etc.
Received from Thad Landon, Esq., the above articles on this 7 day of November, 1912, but none of the underdescribed.

MARTIN J. O'DONNELL,
Att'y for Def't.

And the District Attorney has retained in his possession the following:
One black hand grip.
One tin box.
54 One black wallet containing $71. in one and $2. bills.
Ten memoranda books, pertaining to the lottery business.
31 packages of the tickets of the International Mining & Investment Company.
Bands taken from packages of lottery tickets loose in grip.
Sixteen official statement- of the International Mining & Investment Company of San Domingo, giving list of drawings.
One memoranda book showing sales of tickets.
Letters written by J. W. Easley, John H. Kruse, H. M. Norton,

Owen McKinney, J. T. Todd, pertaining to and ordering tickets similar to the ones above described.

Receipt of Frank Reitz, 605 Washington, Kansas City, Kans., for the sum of $1,000.00, prize for lottery ticket.

Letters written by one Sims, addressed to Mr. Fremont Weeks, and pertaining to the sale of the tickets above described.

All of which last above described property is to be used in evidence in the trial of the above entitled cause, and pertains to the alleged sale of lottery tickets of the company above named.

The COURT: The motion will be denied.

And to this ruling and action of the Court defendant excepted and duly saved his exception.

Mr. O'DONNELL: Defendant asks at this time that the Government be required to elect upon what counts of the indictment it will go to trial. The indictment charges in nine counts, that on three occasions Mr. Weeks sent tickets by mail, and in six of the counts that he sent them by express. The meeting of these charges at the same time will embar-ass the defendant; and, together with that, a different punishment is, as I understand it, attached to sending the tickets by mail from that attached to sending them by express; and also sending the tickets by mail, if they were sent from a point in the state to a point within the state, would constitute a crime; but if they were sent by express, they would have to be sent beyond the limits of the state, so that different proofs with reference to these counts would have to be made, and for that reason the defendant will be embarrassed if forced to go to trial on them at the same time.

The COURT: The motion will be overruled.

And to this ruling and action of the Court defendant excepted and saved his exception.

JOSEPH L. WOLF, called as a witness on the part of the Government, being duly sworn, testified as follows:

Direct examination by Mr. LANDON:

My name is Joseph L. Wolf. I live at 1212 East Twelfth Street, Kansas City, Missouri. My business is Police Officer, connected with the Police Department of Kansas City. I have been so connected a little over three years. I was an officer who arrested Mr. Weeks about the 20th or 21st of December of last year. The arrest was made down at the Union Station, at the Adams Express Company's Office. I did not find any papers upon him at that time. After the arrest he was taken to No. 4 Police Station, 1428 Walnut, in Kansas City, Missouri. In my presence one of the officers searched him, and found paper, lead pencil and lottery tickets.

Mr. O'DONNELL: I move that the last answer be stricken out as a conclusion—whether they were lottery tickets.

The COURT: It will be stricken out—about the lottery tickets.

(Testimony continued:) I have one of the tickets with me, and

produce it. (Witness produced paper, which is marked "Exhibit 1" for indentification.) That exhibit 1 was taken off the person of Mr. Weeks with twelve or fifteen others. I turned the balance over with his suit case (indicating) or grip. They were put in the grip with the balance of them.

Exhibit 1 was then offered in evidence by counsel for the Government, and was received; and is in words and figures as follows:

56 EXHIBIT 1.

The International Mining and Investment Co.

Whole. SAN DOMINGO, *December* 20, 1911.
Class L.
50289 U. S. Issue. 100,000 Coupons. Capital Coupon, $16,000.

1 Dollar. This is to certify that the holder hereof has paid the above named company the sum of one dollar part payment on a whole share of stock in said company of the par value of One Hundred and Twenty Dollars per share being payable in monthly installments of one dollar each. This certificate entitles the holder to such premium granted its number from said company if presented within ninety days from date hereof without any Extra Fee or commission.

Capital Stock, $1,000,000.00.

Five	Two	Seven	Eight	Two
(5	2	7	8	2)
Cinco	Dos	Siete	Ocho	Dos

T. J. WANETO,
Manager.

MANUEL DIGHAS,
Commissioner.

Exhibit 1—back of which is in words and figures as follows, to-wit:

The International Mining and Investment Co.

This certificate will not be valid if pieced, mutilated, disfigured or in any way cancelled or its number altered.

List of Dividends.

1	Capital Premium	$16,000.....	$16,000
1	" "	4,000.....	4,000
1	" "	2,000.....	2,000
1	" "	1,000.....	1,000

2	Premiums of	$500	each	1,000
5	" "	200	"	1,000
10	" "	100	"	1,000
25	" "	60	"	1,500
50	" "	40	"	2,000
100	" "	20	"	2,000
200	" "	10	"	2,000
300	" "	8	"	2,400
600	" "	5	"	3,000

Approximations.

100	Premiums of	$12	$1,200
100	" "	10	1,000
100	" "	8	800
100	" "	6	600

Terminals.

999	Premiums of	$5	$4,995
999	" "	4	3,996
999	" "	4	3,996
999	" "	2	1,998
5,692	Prem's, amounting to		$57,485

This Coupon is a duplicate of the original, the latter being retained at headquarters by the management of this company and at the consent of the holder hereof. Ample deposits will be retained in National Banks to enable local agents to promptly pay all dividends upon the surrender of said duplicate coupons.

Ex. 1 M. W. R.

(Testimony continued:) After I had taken Mr. Weeks to
57 Police Station No. 4, and these papers had been found, I went with the United States Marshal, Mr. Martin, and the Clerk of Police Station No. 4, Mr. Toohey, to 1834 Penn Street, Kansas City, Missouri, on the second floor. That was Mr. Weeks' address at that time.

(Papers were here marked for identification Exhibits 2 to 19 inclusive.)

We searched the upstairs. I did not find this grip in Mr. Weeks' room. I was there once and there were some others ahead of me. I saw this grip on that day about 5:15 in the afternoon of December 21st, 1911, in Captain Edwards' office. Captain Edwards is captain at No. 4 Police Station.

Q. I will ask you, when you saw it, if it had any of the tickets similar to the one you found on Mr. Weeks' person, in it?

Mr. O'DONNELL: That is objected to, that it is not shown that the grip was taken from that place.

The COURT: I assume that you will show that it was taken from the room.

Mr. LANDON: Yes sir.

The COURT: You may answer.

And to this ruling and action of the Court defendant then and there duly excepted and saved his exception.

A. Yes sir.

(Testimony continued:) At the time this grip was at the police Station, I saw these papers were in the grip; and this tin box was in it—I pried that open. This tin box contained some money and papers—I can't exactly state—I think about one or two hundred dollars. I am not positive as to whether it contained any pocket book. I found that wallet in the grip—the wallet was in the grip. I did not examine into the wallet to see what it contained. These (indicating) were in the grip at the time, and this order book—we found some in the room. We took them all down to No. 4 Police Station and then turned them over to Mr. Martin, United States Marshal. We found letters or other papers in the grip of Mr. Weeks at 1224 Penn—several letters and a great lot of those tickets. Of the exhibits 2 to 19 inclusive, I found Nos. 7, 12, 13, 15, 18, 19 and exhibit No. 2 in Mr. Weeks' room—I remember them positively. I could
58 not state whether we found these exhibits in a chiffonier or dresser, but it was in the room—the top drawer. We took the letters to police station and later on turned them over to United States Marshal Martin. I know nothing about the other exhibits. I had no conversation with Mr. Weeks of any kind.

On cross-examination by Mr. O'Donnell, the witness further testified

This ticket has since been locked up in my trunk. The Marshal was with me at the time we made this search of Mr. Weeks' home. I did not have a search warrant. Whether the United States Marshal had a search warrant I could not say.

And on re-direct examination by Mr. Landon, the witness further testified:

I had this ticket and the other ten or fifteen before the Marshal went with me.

Witness excused.

WILLIAM H. TOOHEY called as a witness on the part of the Government, being duly sworn, testified as follows:

Direct examination by Mr. LANDON:

My name is William H. Toohey, Jr. I live 5120 East Fifteenth Street. I am in a real estate office now; was connected with the Police Department up until June 1st, 1912. On December 21st, 1911, I was a Police Office- in Kansas City. I know the defendant Mr. Weeks. I saw him about the 21st of December, 1911, at No. 4 Police Station. At the time I first saw him Officer Wolf was with him, and I believe Hanson. That is the gentleman that just pre-

seded me. I went to his rooms, 1834 Penn Street, twice that day. The first time I went with John Owen; the second time with Officer Wolf and United States Marshal Mr. Martin. I searched the room when I went with John Owen. I found this grip in Mr. Weeks' room, 1834 Penn Street, by the sideboard lying down. At that time I did not find any other papers like Exhibit 1. What was in the grip were supposed to be mining stock. These tickets you show me were in the grip at that time—at the time we found it in the room, and these sheets you show me, and the memorandum book were in the grip at that time, and this order book and the various papers shown me, express receipt and so forth, were in the grip at that time.

59 I don't remember whether that wallet was in the box or in the grip, but I remember the wallet. The tin box was in the grip. We found letters there in the room on the second trip. The second time, Officer Wolf and United States Marshal Martin went with me. We went over the letters that we found there in the room, Exhibits 2, 18, 19, 15, 12 and 7 are some of the letters we found in Mr. Weeks' room. They were found at 1834 Penn Street, in Mr. Weeks' drawer in the sideboard. Exhibits 3, 4, 5, 6, 8, 9, 10, 11, 13, 14, 15, 16, 16A and 17, all were found in the room, in Mr. Weeks' room. Of course I don't remember all the names, but all these papers were found at that time, at 1834 Penn Street. We took these letters down to station No. 4, and United States Marshal Martin kept them. We delivered them to Mr. Martin and took a receipt for them. All of the articles that are now in this grip we got from Mr. Week's room.

Mr. LANDON: I offer the grip in evidence and all this batch of tickets and these sheets. (The documents referred to by Mr. Landon were subsequently marked by numbers from 20 to 618 inclusive.)

Mr. O'DONNELL: Defendant objects to the introduction of the articles in question for the reason that it appears from the testimony of the witnesses, and also from the motion heretofore filed and passed on by the Court, that all of these papers and this property were seized by officers of the Government without a search warrant, by breaking open the home of the defendant, Mr. Weeks, and thereby violating his rights to be secure from unreasonable searches and seizures, and violating his right not to be compelled to give testimony against himself, in contravention of the provisions of the Fourth and Fifth Amendments of the Constitution of the United States, and Sections Eleven and Twenty-three, Article 11 of the Constitution of the State of Missouri.

The COURT: The objection will be overruled.

And to this ruling and action of the Court defendant then and there excepted and saved his exception.

The documents offered were received in evidence and consisted of

One black grip.

One tin box.

Exhibits 21, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38 being papers marked Official Statement International Mining and Investment Company.

One black wallet.

60 Exhibit 23, order book.

Exhibits 2, 3, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 15½, 16, 16A, 17, 18 and 19 being correspondence with Mr. Weeks.

Exhibit 19*a* and 19*b* receipts from Mr. Weeks.

Exhibits 1, 20, and 104, tickets used in evidence.

506 tickets of International Mining and Investment Company.

It is agreed that all tickets introduced in evidence as above are similar to Exhibit No. 1 except as to numbers, and some of such tickets were half tickets and some quarter tickets, that is the 506 tickets included whole, half and quarter tickets and all being different numbers, but are similar in all other respects as Exhibit No. 1 and need not be copied in full herein.

(Testimony continued:) I was at the Police Station when Officer Wolf came in with Mr. Weeks. I had been at the house once at that time.

On cross-examination by Mr. O'Donnell, the witness further testified:

I suppose these things were kept in charge of the District Attorney since I saw them. I have not seen them since last spring—the last term of court. We got other things besides those things. I did not have a search warrant. The United States Marshal was not with me when I got that grip—on the second trip the Marshal was with me—Not when I got the grip. I entered the house by unlocking and opening the door myself. I went on the direction of a neighbor and she told me where the key was kept. The lady of the downstairs floor showed me where they kept the key, and I got it in the hallway, and opened the door myself and went in. I think most of these articles you called my attention to we got at the house at the time. I suppose I got this stock certificate also. There were some certificates there, but I don't remember what all of them were—I only had them that afternoon, you know. I would say that I presume we got them.

I could not say positively that we got this big county bond—this big county investment bond—also. I would not say that we didn't.

Q. Would you say that you got those tickets or stock cer-

61 tificates of the Tennessee Coal Mining & Milling Company—here are a few of them, you can look at them.

A. I don't remember the names of any of the certificates. I don't know positively whether these were in there or not.

Q. Do you know positively whether any of these things you hold in your lap were in Mr. Weeks' home or not, that night?

A. I know there were some deeds and some tickets and receipts among the papers. I don't remember whether there were any stock certificates. I could not say positively whether there were some of those things (indicating) it is hard to remember. I remember the real estate papers and some insurance policies—I have no reason to remember the names of any of the certificates. I could not say that I remember about the big county investment bond. I can not say that I remember those things (indicating).

I called Mr. Martin up at his residence, after we found the grip, and he came down to No. 4 Police Station. Then I returned to Mr. Weeks' house with Officer Wolf and the Marshal.

Mr. LANDON:

Q. You called Mr. Martin, United States Marshal, after you found these tickets and papers?

Mr. O'DONNELL: That is objected to as leading and suggestive.

The COURT: He may answer it.

And to this ruling and action of the Court defendant then and there excepted and saved his exception.

A. Yes Sir after I got the grip.

Redirect examination by Mr. LANDON:

Q. Mr. Toohey you need not answer this until the attorney objects—what was your reason for going to Mr. Weeks' room and making a search?

After a discussion at the Court bench the question was not pressed.

Witness excused.

A. J. MARTIN called as witness on the part of the Government, being duly sworn, testified as follows:

Direct examination by Mr. LANDON:

My name is A. J. Martin. I live in Kansas City. I am United States Marshal and have been for two years. I was United States Marshal in December, 1911.

62 Q. I will ask you whether you received this grip and these tickets which I show you, these sheets, this bank book, this memorandum, this wallet and tin box, and other papers, and the letters and exhibits which I have read, the numbers of which I have read—any time about the 21st of December of last year?

A. I received a good deal of that personally, and some of it was brought in by Officers Wolf and Toohey to the District Attorney's Office, the office of the Marshal, and I was present when they brought it in. I was called and went to the Police Station No. 4 on December 21st, along in the night, I suppose in the neighborhood of ten o'clock or half past. I saw the grip there at the time. I saw the tickets you have there, the same being exhibits Nos. 1, 20, 104 and 506 other tickets, and these papers (indicating) and this memorandum book, and this tin box. Now, I am not positive what was in the tin box at the time I saw it at the Police Station, but that the officers had it there, but I could not just say what was in the tin box. I remember they had it open. I saw the wallet. The wallet had a quantity of bills in it when I saw it there at the Police Station. I believe there was seventy-one dollars in one and two dollar bills, in this wallet. I have had charge of the wallet ever since until this morning. The seventy-one dollars in bills that were in the wallet

at this time we kept a long time in my desk, until after the Grand Jury in April of this year, then when I was going away I didn't care to leave that much currency in my desk, and I deposited the currency. I have a receipt for that much currency to be delivered to whomever the Court shall order it delivered.

I looked over these tickets and read them. I glanced through this paper—this one entitled "Official Statement of the International Mining & Investment Company," to see what they were. Did not glance through all the papers in the grip—we went through them hastily. Part of the papers I examined were the tickets and these sheets (indicating). After we had seen the grip and contents, as I have described, we took them, and decided that there was, perhaps, other evidence at the house. Officers Toohey and Wolf and myself went to the house and were admitted, I believe, by some young man,
I believe, who said he roomed there. I don't know his name.
63 We did not break in the door—we rapped and he admitted us. When we got in the room we went through what seemed to be, I think, either a dresser or a chiffonier—something of that sort—some piece of household furniture—I could not testify just at this moment what it was. We found some letters, some of which were signed by different parties in different parts of the country—one I remember being a Mr. Beasley—another signed by Mr. —.

Mr. O'DONNELL: That is objected to—the letters speak for themselves.

The COURT: I think you better identify them.

Q. I show you papers marked exhibits 18 to 2- inclusive, and ask you if these are the letters you found in Mr. Weeks' room?

A. (Examines papers.) Yes sir, they are.

These Exhibits the numbers of which you indicated to me, were found in Mr. Weeks' room. I think they were turned over to the District Attorney's Office the next morning—the District Attorney and the Postoffice Inspector I believe. To Mr. Sharon.

In addition to these tickets and sheets there were a number of other documents that were drawn up in legal form, that seemed to be deeds and abstracts of title,—that pertained to abstracts of *of* title. I think they were turned over and I took Mr. Weeks' receipt for them, I believe.

Q. Now Mr. Martin you need not answer this question until the attorney has an opportunity to object. What caused you to go to Mr. Weeks' room after you had seen this grip, the tickets and the papers I have shown you?

M. O'DONNELL: I object to the question because it has no bearing on the question involved—does not prove or tend to prove any issue raised by the indictment—hence we object to it.

Question withdrawn.

Mr. O'DONNELL: I ask that the jury be discharged because the District Attorney has asked a question that has no bearing on the issues, and evidently asked for improper purposes.

The COURT: The objection will be overruled.

And to this ruling and action of the Court the defendant then and there excepted and saved his exception.

(Testimony continued:) Q. I show you a paper marked
64 Exhibit 19 and 19-A, and ask you Mr. Martin if they were given you?

A. They were.

Mr. LANDON: I offer in evidence Exhibits 19 and 19-A.

Mr. O'DONNELL: No objections.

The District Attorney then read the Exhibits to the jury, as follows:

EXHIBIT 19.

J. H. Fuoss,
The Jeweler,
Diamonds and Watches,
213 N. Main Street.

BROOKFIELD, Mo., *Oct.* 17, 1911.

Fremont Weeks, Esq.

DEAR SIR: I return you $50.00 worth of unsold tickets out of 170.00. I sold 120.00 worth 20% Leaving 96.00. I also send you 18.00 winners, making $78.00 which you will find inclosed.

Send me 75 1.00 tickets, 125-fifty cent Tickets 50-25 cent Tickets.

Resp't,

OWEN McKINNEY.

Ex. 19.
M. W. R.

EXHIBIT 19-A.

Form 184.

KANSAS CITY, Mo., *Dec.* 22, 1911.

Received of A. J. Martin, U. S. Marshal One hundred (100) Dollars, in cash being the cash in envelope of Adams Express Company.
$100.00. FREMONT WEEKS.

Ex. 19A.
M. W. R.

(Testimony Continued.)

Q. And this other property was delivered to Mr. Weeks in accordance with the receipt?

A. It was.

On cross-examination by Mr. O'Donnell, the witness further testified:

I cannot tell you at this distance whether I had this property on this table in my custody. There was a great quantity of stuff—I can't tell you what it was. (Examining document.) I remember some of these articles and some I have no recollection about. I particularly remember that there were a number of things of that sort (indicating), I think I see something here that I have
65 seen before. I did not have the stock certificates in my possession until this morning. I don't know where they were.

I think I remember seeing these stock certificates—I think they were in the grip with these—as to the other stuff—that, I think has been in the District Attorney's Office. I had the wallet only in my possession. I retained what was in the wallet. The balance I think has been in the possession of the District Attorney, as far as my knowledge is concerned. I recall that some of this—quite a part of this—was in my possession with the other.

The COURT:

Q. Is there any dispute about that?

Mr. LANDON: No—I had it in my possession. It was never called for until to-day.

The stock certificates were marked for identification at the instance of the defendant, A, B, C, D, and E.

(Testimony Continued.)

Mr. O'DONNELL:

Q. With regard to the receipt Exhibit 19 and 19-A, which you identified, I will ask you, Mr. Martin, if, at any time the property described therein was delivered to Mr. Weeks, you had any conversation with him regarding the delivery of the property?

A. Why, there was something to the effect that this was all of the property that he cared for—that was in our possession. I believe I asked him if there was anything else of interest to him—that it was too bad we held these things that had no bearing on the case. I expressed some manner of regret that anything we should have taken, anything that had no bearing on the case, and I asked him if there was anything further that he needed,—aside from the property described here. He said there was not—that this was everything that was of any particular importance.

When we went over to Mr. Weeks' home and got this stuff we did not have a search warrant. I went with Officer Toohey and Officer Wolf. All I got was those letter-, Exhibits 2 to 19 inclusive. There was not any property that I got at his house that was returned to Mr. Weeks. I think all we took when I was there was those letters and envelopes. I took that property that I have identified, the other property in the grip consisting of tickets etc. was taken before I went to the house.

Witness excused.

66 FRANK F. SHARON called as witness on the part of the Government, being duly sworn, testified as follows:

Direct examination by Mr. LANDON:

My name is Frank F. Sharon. I live in Kansas City, Missouri. I am a Postoffice Inspector. I have been a Postoffice Inspector twelve years. I am connected with the Kansas City, Division, with headquarters at Kansas City, Missouri. I had charge of the investigation here in December, 1911—the investigation of the case against Mr. Weeks. My first connection with it was when I was

called into the office of the United States Marshal about December 22nd, 1911. I met there Mr. Weeks—Fremont Weeks. This property that is before me—this grip, these tickets and sheets, and the wallet, and the tin box and the letters there,—was there at that time: I had some conversation with Mr. Weeks in regard to these tickets. A part of the conversation, I asked him questions, and part of the time the questions were asked by Mr. Landon, and we asked him if he had been sending lottery tickets by mail to Parsons, Kansas, to J. W. Easley, and to Mr. Todd. He said No, that they had been sent by American Express. We asked him if a letter dated December 1st and signed by Beasley, if he had received that letter—he said he had and had sent the tickets in response to that letter, two tickets—two half tickets; he had sent two of those tickets and given a quarter ticket in addition. Yes, Exhibit 2 is the letter I refer to. I showed this letter to Mr. Weeks.

We asked him if he had done any business with a man by the name of Norton, at Council Grove—he said he had sold him tickets and the most of them had been sent him by messenger or delivered in person, but that along in April he had sent him one—some tickets by express. We asked him if he had done any business with a man by the name of——

Q. (Interrupting.) Just a moment. I show you Exhibit- 16 and 16-A, and ask you if this is the letter you have referred to, from Mr. Norton?

A. Yes, sir.

I asked him if he had done any business with a man by the name of Owen McKinney, at Brookfield, Missouri, and he said he had sent him a number of tickets.

Mr. O'DONNELL: That is objected to as being outside the
67 issues involved in the indictment on trial.

The COURT: I don't know what tickets are meant. I think he should identify the tickets.

(Testimony continued:) I am talking about these tickets we had there and showed to him when we were talking to him at the time.

The COURT: Now as to the sending to other parties along about the same time as the time of the offense charged, that is admitted, not as establishing the specific offense—that has to be established by evidence of making the particular shipment charged, but as bearing upon the intent of the party, and effecting the question of whether he was engaged or was not engaged in the business—not as proving the substance in question of the mailing or of the transmitting by means of express, as charged in the indictment, but merely as bearing upon the question of whether he was or was not engaged in this sort of business.

And to this ruling and action of the Court defendant then and there duly excepted and saved his exception.

(Testimony continued:) Those are the letters I referred to in talking to him—to Mr. Weeks—Exhibits 17, 18, and 19. Mr. Weeks said that he had been selling these tickets to Mr. McKinney covering a considerable period of time, every month. He said he

got those letters by messenger and that he sent the tickets in the same manner, by some one going or coming from Brookfield here, and going between them back and forth, that they were not sent by mail or express.

Q. Now, I show you Exhibits 3 and 5—and the letter that is contained in the envelope marked Exhibit 5, and I will ask you if at the time of your conversation, you had those letters and that envelope?

A. Yes sir.

Q. You may state what, if any, conversation you had with reference to the letter, the Exhibit, the number of which I have called your attention to?

A. I referred to that as being one of the men at that time, at Parsons, to whom he said he had sent tickets by American
68 Express.

Q. Mr. Sharon, I show you again Exhibit 5, and ask you—being an envelope—and ask you what it indicates?

Mr. O'DONNELL: The envelope itself is the best evidence.

The COURT: He is a Postoffice Inspector, and as such is familiar with the insignia—the stamp and so forth, used in the Department—he may testify if he knows, what that signifies.

A. This envelope signifies that it was mailed at Parsons, Kansas, December 18th, 1911, at — o'clock P. M. There is nothing else to indicate where it was received or at what Postoffice, but the address.

Mr. O'DONNELL: This envelope is objected to, as I understand, it has not been introduced in evidence.

The COURT: He is identifying certain features of it—if it never is introduced in evidence it does not amount to anything.

(Testimony continued:) Those letters Exhibits 4 and 12 were called to Mr. Weeks' attention at the time of my conversation with him. He said that he had received them from Mr. Beasley, by mail. At the time of my conversation with Mr. Weeks I had Exhibits 6, 7, 11, 13, 14, 15, and 15½. With reference to them he said in regard to the Kruse letter, that he had done business with Mr. Kruse at Sedalia, had sent him tickets on one occasion by express, and in relation to the other letters, they were from a man by the name of Sims—I asked him who Mr. Sims was; he said Mr. Sims was the man from whom he got his lottery tickets,—those tickets (indicating). I asked him where Mr. Sims lived. He said he traveled around, said he had known of him being in St. Louis, Missouri, but more recently at Monarch, Arkansas. I asked him how he got his tickets—these tickets—and he said by express. From St. Louis, Missouri. I asked him from whom he got them and he said he didn't know,—that he had never been able to find out where they came from although he had tried. I asked him if he could give me any address or any location there that we could investigate it, and he said not. I asked him if he had got them from Simms, and he said no, but he paid Simms for them—was sending Simms considerable money every month—my recollection of it was that he was

sending Simms two hundred dollars a month, every month. He said that he had been selling these tickets several years—four
69 or five years. He had been selling them in Kansas City. I am not certain whether he said he had been in the business before he came here, when living in Joplin, or not. He told me he had lived in Joplin and Sedalia, Missouri, but I am not sure whether he said he had been in the lottery business before he came here or not. This leather wallet was there at the time I had the conversation with Mr. Weeks. It contained a sum of money, I don't know the amount, I didn't count it. The money was all in bills, ones and twos as I recall it. He said this money came from the sale of these tickets—these tickets I have described—and he said he was going to send it to J. D. Sims, to Monarch, Arkansas. I don't know who the money in this wallet was delivered to. It was there in the possession of the Marshal and I don't know what became of it. I think I asked him what he made each month from the sale of these tickets, but I don't know, I am not clear on that,—as to the amount he made out of it.

That Exhibit 8 was among the papers in this grip and was turned over to me. I asked Mr. Weeks in reference to this and he said it was a genuine receipt signed by these parties for this money indicated thereon, and had reference to a ticket that had drawn a prize in this lottery.

On cross-examination by Mr. O'Donnell, the witness further testified:

Mr. Landon was present at the time of this interview. Mr. Landon and I met Mr. Weeks in the Marshal's Office and had an interview with him. I don't know how long he had been in custody at that time, but he was then in the Marshal's Office

Q. Under arrest—you testified at the preliminary examination didn't you, Mr. Sharon, in this matter against Mr. Weeks?

A. I believe I did. Before the Commissioner, Mr. Thomson. No, I did not say at that time that Mr. Weeks told me that he shipped these tickets through the mail to Mr. Todd and Mr. Beasley. He said he sent them by American Express. I don't recall that he told me where he deposited them. My recollection is that he said that he deposited them in Kansas City, Missouri.

Q. But a moment ago you didn't recollect that fact—now, Mr. Sharon, you testified before the Commissioner with reference to this matter, you testified what you knew about it, did you not?

A. Yes.

70 Q. Well, Mr. Landon asked you much the same questions that *has* has asked now, did he not?

A. I don't recollect what questions he asked.

Q. Did you at that time, testify that Mr. Weeks told you that he had shipped those tickets by the American Express Company?

A. I don't recollect whether he did or didn't.

Q. So that you may be mistaken about what Mr. Weeks told you on that point?

A. No, Sir.

Q. Now, I will ask you if this question was not asked you and you made this answer at that time: "Q. Now, what if anything was said by him about sending tickets to Mr. Easley at Parsons, Kansas?

A. He said that he had sent tickets to Mr. Beasley at Parsons, Kansas, by express." Did you make that answer to that question?

A. Yes, sir I presume I did, if it is in that statement—I made that answer—that he sent them by express.

Q. You now say he said he sent them by American Express?

A. Yes Sir, I don't know if that question was asked me when I testified before the Commissioner. I looked over my notes—the notes that were taken by Mr. Landon—at the time we were asking these questions; Mr. Landon made some notes in my presence, and in looking over the notes, I see it said, "American Express". I am satisfied that this was correct.

Q. The only recollection you now have is that which you received from the notes you read immediately before the trial?

A. No, my recollection is that he said American Express.

Q. Now, that was a few days before, on the 22nd, as you say, you had a conversation with Mr. Weeks about this matter, and his preliminary was had on the 29th, before the Commissioner, was it not?

A. Yes Sir.

Q. And at that time you could not say what Express Company it was.

A. It was not asked me.

Q. I will ask you the question again——

"Mr. LANDON: Now what if anything was said about sending tickets by him to Mr. Beasley by express? He said he sent tickets by express to Mr. Beasley, to Parsons, Kansas."

Q. (Continuing:) Now why didn't you mention the fact that he said American Express Company had received the tickets
71 from Mr. Weeks at that time?

A. I answered the question at that time. If it had been asked what express company I would have recollected it and answered. No, I did not get a written statement from Mr. Weeks. I have been in charge of this matter of investigating evidence against men in such cases for a good many years.

Q. And, as I understand it, you have, by your ingenuity and ability, been promoted to the office of Inspector in Charge of that department?

A. No, not Inspector in Charge—I am city inspector in charge of the business in Kansas City, Missouri. I have for a good many years, been accustomed to take confessions from—interview—men charged with crime. I sometimes have them sign a statement, but not usually.

Q. Is it not a fact Mr. Sharon, that detectives and men in the police department, or men engaged in the investigation of crime, whether they are Postoffice Inspectors or otherwise, when they are interviewing men charged with crime so as to get a confession from them, that they usually have it written out and signed?

A. That is not my experience, not usually. Sometimes they do and sometimes they don't.

Q. Don't you know that in these recent crimes that have been committed in this city, where people have been killed, and holdups—that you have seen written statements in the newspapers—and that it is the invariable custom here to do that?

Mr. LANDON: That is objected to as immaterial.

The COURT: I think that is immaterial—what is done in some other department of some other service—I think that is immaterial.

Q. Now, Mr. Sharon is it not customary in order that there should be no mistake about it, as to what the man told you, that you write down what he told you?

A. You mean to get a signed confession? No, sir, it is not the usual custom—they do that sometimes. It depends on circumstances. I was not in charge of this when he was being questioned. Mr. Landon asked the questions and I asked questions sometimes—part of them. I asked some questions whenever I thought of anything I wanted to know.

72 Q. You have testified to anything Mr. Weeks said in response to Mr. Landon's questions, Mr. Sharon?

A. Yes sir. No Sir, I did not ask all the questions. There was nothing peculiar about this case that caused me not to get a signed statement. The circumstances under which it was taken, Mr. Landon was in charge of the questions, and I was there, and, as I say I asked part of the questions.

Q. But do you recall that you didn't testify before the Commissioner that Mr. Weeks told you that he had sent these tickets by the American Express Company, to Mr. Beasley?

A. The note of that will show what I testified. I suppose they are in your possession—that you are reading from them.

Q. Mr. Weeks made no secret of this matter—you may state whether or not he frankly told you all about the matter?

A. That would be an opinion—Mr. Weeks didn't appear to be frank about this matter, we had to dig it all out by questions, calling his attention to these papers. I made no suggestion that it would be better for him to tell me. I had to dig it out of him by asking questions. I believe he was in the custody of the Marshal at that time. I mean by saying that I had to dig it out of him, that I had to ask questions on each particular point. Either I asked the questions or the Assistant District Attorney asked the questions.

Q. He told you that he paid Mr. Sims—did you ever investigate Mr. Sims?

A. I tried to find Mr. Sime but was never able to find him. Mr. Weeks told me that he sent Mr. Sims two hundred dollars every month. The last he was going to send to Monarch, Arkansas. He didn't say where he had sent it, but he said he had been in St. Louis and different places.

Q. Now you say Mr. Weeks was not frank about telling you about this matter—what do you mean by that?

Mr. LANDON: He didn't say that.

The COURT: No, he didn't say that—he said it was a matter of opinion.

Q. What reluctance if any did he manifest?

Mr. LANDON: I think he has answered that.

73 The COURT: If he manifested any reluctance, he may state what he did.

A. He made no statement, he made, volunteered, no statement. It was only after repeated questions that he made any statement. He hesitated quite a good deal all the time. He was slow in answering. I believe he did give some answers to every question that we asked. He said he had done some business with Mr. Norton, sent him some tickets—sometime by messenger—usually by messenger—some one who was going from here to Council Grove,—and on one occasion he sent them by express. That is he gave them to some express messenger,—or some railroad man, some enginer or fireman or someone that was going over from here to Council Grove, to deliver personally. I understood that he didn't go to some express office and deposit them with the express company but just gave them to some acquaintance. That is, he delivered them to some railroad man, I don't recall that he said he delivered them to the express messenger, except on one occasion when he said he sent them by express. I recollect that he said he sent them to Norton by express and by personal messenger, once by express and on other occasions by personal messenger. I made no personal memorandum of what Mr. Weeks said to me, made no memorandum whatsoever.

Q. And are you now testifying from your recollection?

A. I made just one memorandum on the matter; I started to make a memorandum and Mr. Landon was keeping memoranda and I made a memorandum of money sent to J. D. Sims, Monarch, Arkansas, two hundred dollars, and also Mr. Beasley writing for tickets, and also Mr. J. W. Kruse at Sedalia, sending him tickets. That is all the memorandum I made.

Witness excused.

The trial was here continued until the following morning at 9:30, at which time the trial was resumed and testimony taken and proceedings had as follows:

J. P. TODD, called as a witness on the part of the Government, being duly sworn, testified as follows:

Direct examination by Mr. LANDON:

My name is J. P. Todd. I have been sworn.

74 Mr. O'DONNELL: At this time the defendant moves to strike out the testimony of the witness Sharon, with reference to conversations between the defendant and himself at the Office of the District Attorney, for the reason that the witness testified that Mr. Weeks' conversation had to be dug out of him—that it was not voluntary, of his own free will, and for that reason defendant's right under the Fifth Amendment of the Constitution of the United States has been violated.

The COURT: Under the explanation of that expression made by the witness, the motion will be overruled.

And to this ruling and action of the Court defendant then and there excepted and saved his exception.

(Testimony continued:) I have been sworn as a witness. I live at Parsons, Kansas. I am a machinist. This has been my business about fourteen years—with different roads over the country—about seven or eight years with the M. K. & T.

Q. Mr. Todd I show you Exhibit 3 and ask if it bears your signature, and if it is your handwriting?

A. Yes sir, it was written at Parsons. I addressed it to Kansas City, to him, to Fremont Weeks. I put it in the envelope and then mailed it. I put a stamp and the address on the envelope before I mailed it.

Mr. O'DONNELL: The defendant makes the same objection that he made to the introduction of the other evidence seized—that it was obtained by breaking into his home and is compelling him to testify against himself.

The COURT: The objection will be overruled.

And to this ruling and action of the Court the defendant then and there excepted and saved his exception.

Exhibit 3 was then received in evidence and read to the jury. Exhibit 3 is in words and figures as follows:

PARSONS, KANS., *Sep.* 17, '11.

Mr. Fremont Weeks.

DEAR FRIEND: Enclosed find one dollar for which send me one whole or two halves, and oblige.

J. T. TODD,
700 *N. Central, Parsons, Kans.*

(Testimony continued:)

Q. Mr. Todd to what did you refer by the statement in this letter "A whole or two halves"?

A. Tickets.

75 Mr. O'DONNELL: This is objected to for the reason that the letter is the best evidence of what it contains.

The COURT: This is an explanation of an ambiguous term—it may be explained by the witness.

Exception to defendant.

And to this ruling and action of the Court defendant then and there excepted and saved his exception.

(Testimony continued:) I meant one whole ticket or two half tickets. Lottery tickets, I suppose.

Mr. O'DONNELL: I move to strike out that answer for the reason it is a conclusion of the witness.

The COURT: He may state what tickets they were, and in what company or institution they purported to be.

Mr. O'DONNELL: I would like to have a ruling on that motion.

The COURT: I will rule that it is improper at the present time; but he may answer as to the nature of the ticket—the answer may be striken out.

(Testimony continued:) Q. Describe the nature and character of the ticket that you referred to in this letter—do you remember the name of the company?

A. I believe the investment company at San Domingo,—a land company of some kind.

Mr. O'DONNELL:

Q. A land company?

A. I suppose it was, that is the way the tickets read.

(Mr. LANDON:)

Q. I show you Exhibit 1 and ask you if in your letter, you referred to tickets similar to Exhibit 1?

A. Yes sir. I suppose I received the tickets as called for in this letter—I received them every month at that time.

M. O'DONNELL: That is objected to and I ask that it be stricken out—that he supposed he did.

The COURT: He may state, to the best of his knowledge, whether or not he received those tickets in response to that letter.

A. Yes sir.

Q. Did you preserve those tickets that you received in response to this letter?

Mr. O'DONNELL: That is objected to as leading and suggestive.

76 The COURT: The objection will be overruled.

(Testimony continued:) No I have not those tickets now. Exhibit 1, which you show me is the whole ticket.

Q. I show you here Exhibit 20 (a paper having been marked Exhibit 20) and ask you whether or not the half ticket which you referred to in your letter of the 17th of September, was similar to the Exhibit which I hand you?

Mr. O'DONNELL: That is objected to as leading and suggestive, putting the answer in the witness's mouth.

The COURT: The objection will be overruled.

Exception to defendant.

And to this ruling and action of the Court defendant then and there excepted and saved his exception.

Mr. LANDON: I offer in evidence Exhibit 20.

Mr. O'DONNELL: That is objected to the same as before.

The COURT: The objection will be overruled.

Exception to defendant.

And to this ruling and action of the Court defendant then and there excepted and saved his exception.

(Testimony continued:) Q. Mr. Todd, the letter of September

17th, reads, "Enclosed find one dollar"—did you send the dollar with the letter?

A. Yes sir, I sent a dollar bill. I wrote the letter—contained in Exhibit 5 and that is my signature. After I had written the letter I mailed it—in Exhibit 5—at Parsons. The handwriting—the address and the writing in the upper lefthand corner of the envelope—is mine.

Mr. LANDON: We offer in evidence Exhibit 5 together with the letter contained in the envelope, Exhibit 5.

Mr. O'DONNELL: I make the same objection.

The COURT: The same ruling.

Exception to defendant.

And to this ruling and action of the Court defendant then and there excepted and saved his exception.

The letter and envelope were then received in evidenec and by Mr. Landon read to the jury.

Exhibit 5 (envelope and letter) are in words and figures
77 as follows:

(EXHIBIT 5.)

Envelope.

Return 5 da. to
700 N. Central
Parsons, Kans.

Parsons, Kans.
Dec. 18,
8-P. M.
1911.

Two cent
Postage
Stamp.

Fremont Weeks,
1824 Penn.
Kansas City, Mo.

Letter as follows:

PARSONS, KANS., Dec. 18, '11.

Fremont Weeks, Kansas City, Mo.:

Enclosed find one dollar for one whole I can not understand what happened to the other one you sent last month as we only received one.

Wishing you a Merry Xmas & Happy New Year, I am,
Yours Resp.,

JOSEPH T. TODD,
700 *N. Central, Parsons, Kans.*

(Testimony continued:) I enclosed in this letter the one dollar indicated—just a dollar bill. "For one whole" in the letter refers to one whole ticket, similar to Exhibit 1 which you have already shown me. I don't remember whether I received the ticket in response to this letter. There was one month I didn't receive it—I think that was the month before—probably the month before that.

Q. That letter speaks of an order for former tickets—how did you receive the tickets?

A. I received the tickets in a letter—one ticket in a letter.

Q. By mail?

Mr. O'DONNELL: That is objected to as leading and suggestive—the witness ought not to be told how he received it.

(Testimony continued:) I received it at Parsons. It came from Kansas City, is all I know.

Q. Kansas City, Missouri?

Mr. O'DONNELL: That is objected to for the reason that counsel is putting the answer in the witness's mouth.

The COURT: I don't think so. He may state how he received it, whether he received it by mail or otherwise.

78 (Testimony continued:) I received it by mail. I received the ticket called for by my letter of September 17th by mail, at Parsons, Kansas, from Kansas City, Missouri. I met Mr. Weeks once in Kansas City, called at his house. It was three or four years ago, I came up to Kansas City—I went over to see him at Kansas City, Missouri. He was on Adaline Street at that time. I got the same kind of tickets at that time as the others that you have shown me. I have been purchasing tickets, the same as you have shown me, for five or six years, I should say. I received them every month—there might have been a month that I missed, four or five years ago.

Q. Did you ever draw anything from the tickets, Mr. Todd?

Mr. O'DONNELL: That is objected to. We are trying a case where the indictment charges that Mr. Weeks sent tickets by mail and express on December 1st and December 18th, and this question is not pertinent to the charge in the indictment.

The COURT: Well, as bearing upon the question whether this party is engaged in that business, and in getting at the whole character of the transaction, I think he may go into anything contiguous to that charge.

(Testimony continued:) About four or five years ago I received some small prize—about fifteen or twenty dollars, during the whole time. The tickets that I was purchasing at that time were similar to the ones you have shown me. Sometimes—some months before I was married, I bought three or four or five hundred dollars' worth I believe. That was four or five years ago. The last four or five years I have bought one ticket a month. I received these tickets by mail.

Q. I show you here Exhibit 21 Mr. Todd, and ask you if you ever received papers similar to these?

A. Yes sir, every month from Kansas City, Missouri. I don't know who from. I received them by mail.

Mr. LANDON: I offer Exhibit 21 in evidence.

Mr. O'DONNELL: That is objected to, the same as before.

The COURT: The objection will be overruled.

Exception to defendant.

79 And to said ruling and action of the Court defendant then and there excepted and saved his exception.

Exhibit 21 was then read to the jury and received in evidence.

Exhibit 21 is in words and figures as follows:

(Here follows fac-simile, marked page 79.)

The International Mining & Investment Co.

ORGANIZED for the purpose of Locating, Mining and Dealing in properties for investment, offer their Subscription Coupons to the public, in whole or fractional parts, with the assurance that a trial will convince the most skeptical that the Coupons are as represented, and thereby is offered a liberal plan of investment for the acquirement of dividends. We trust that the liberal patronage extended in the past will be accorded in the future.

SCHEDULE OF PREMIUMS.

58 79

80 (Testimony continued:)

Q. Mr. Todd, did you ever receive the tickets similar to the ones I have shown you in any other way than by United States Mail?

A. By express.

Mr. O'DONNELL: I move to strike out the answer for the reason that the witness has already testified that he received the tickets by mail, all the tickets he ever received.

The COURT: I don't know whether that is his intention or not. He testified that he had received the tickets by mail.

The WITNESS: I didn't say that I had received them all by mail.

Q. You answered, I believe, in answer to my question that you received some by express?

A. Yes sir, at Parsons, Kansas, from Kansas City, Missouri. My best recollection is that I received them only once by express.

On cross-examination by Mr. O'Donnell the witness further testified:

I said the tickets came from Kansas City, Missouri. I did not see them deposited in the mail or in the express office at Kansas City, Missouri.

Q. Then you simply conclude that they came from Kansas City, Missouri, because you had talked with Mr. Weeks in Kansas City, Missouri?

Mr. LANDON: This is objected to as not a proper question.

The COURT: He may answer. This is cross examination.

(Testimony continued:) My letters were postmarked Kansas City. That has been so long ago that I don't remember about the express—that is merely supposition I suppose.

I testified before the Commissioner Mr. Thomson in this case, on December 29th, last year.

Q. And at that time Mr. Todd, Mr. Landon asked the question referring to the tickets that Mr. Weeks had sent you, according to your statement, in December, "Mr. Landon: How did you receive the tickets Mr. Todd? A. I could not say whether I received them though the mail or through the express company—I got an express package"—was that question put to you and did you make that answer?

A. I believe I did, yes sir.

Q. Now Mr. Todd, which statement is true, that you received that ticket through the mail, or your statement that you received
81 it through the express company—were you testifying truthfully in December when you said that you received that ticket by express or are you testifying truthfully now when you say that you received it by mail?

Mr. LANDON: I object to that form of the question.

The COURT: He may ask him which is the fact.

(Testimony continued:) I don't believe I testified that way. I received an express package at that time from Kansas City—in

December. I don't believe that I testified that I received the ticket in it.

Q. I show you the testimony—read it. (Witness shown transcript.)

A. Yes sir, I made that answer. I don't remember just when I received that ticket.

Q. You have testified when Mr. Landon asked you, that you remember receiving the ticket about the 18th of December—now you say you don't remember when you received it.

A. It was about that time—I don't remember just when the ticket came. On the 29th of December I did not remember. My wife received the package. I was in the house—my wife received the package.

Q. Was that—so that at that time you were not testifying truthfully, when you said you received these packages by express?

A. Not those tickets. In addition to Mr. Weeks, there was an engineer that used to run into Joplin that used to bring tickets over. He is the one that started the ticket business in Parsons. We use-to buy tickets of him and he would take back, I suppose, what he didn't sell. I don't know from whom he got the tickets. I suppose from Weeks. It was the same company. I did not come to see Mr. Weeks after he came to Kansas City. When I was here on business I looked up Mr. Weeks to ask him to send these tickets. I knew what I was getting. Mr. Weeks did not solicit me to come to purchase these tickets. I do not remember the date or number of the ticket I received on December 18th. It was the December drawing—I don't remember the date of it—I don't remember the number of it. I received one ticket on September 17th. I think it was a whole ticket. I don't remember—I generally send
82 for a whole ticket. Sometimes I got quarter tickets.

Q. Did you receive any quarter tickets on September 17th or December 18th?

A. I don't remember what I did receive. I used to write for the whole ticket or whatever he had, and if he was out of whole tickets he generally would send me what he had. I remember seldom getting quarter tickets, but I did sometimes. As I remember—it is a long time ago—that I got any express—I think they came in a cigar box with a lot of paper in it at that time.

Q. I will ask you this question, if you didn't receive them in express envelopes, of that description (indicating envelope)?

A. No sir, not that I remember of, unless it was the last ticket, but I don't think it came that way,—on December 18th. I got a package by express in December, but whether the ticket was in it or not I don't know.

Q. Examine this envelope and state whether it is similar to the one you received with the ticket in it?

A. I didn't say I received a ticket that way. I received a letter in December, in a package like this. It was sealed. It had a letter in the package, but if I received a ticket before that, I would not say. The ticket was not in the letter; there was just a letter in that.

I think it was the Adams Express Company I received those tickets from.

Q. And you testified at the preliminary examination that you received that ticket on December 18th, by the Adams Express Company, did you not?

A. Yes sir, December 18th—I don't believe I testified when that was there—I might have testified as to the letter. I don't remember when the drawing was.

Q. I will ask you if this letter—if this question was not asked you and this answer given you at the preliminary examination: "By Mr. Landon: Q. Mr. Todd, you got an express package? A. I think the ticket was in it" did you make that answer?

A. Yes sir.

Q. And you say here (indicating the transcript), "I received it by mail or express package"—I call your attention to this, "Q. You got an express package? A. I got an express package; I
83 think the ticket was in it. Q. Adams Express? A. Yes sir."

Mr. LANDON: Go ahead and read the whole answer.

Q. Now Mr. Todd did you receive these tickets at that time over the Adams Express or through the mail?

A. I can't say, I don't know.

Mr. O'DONNELL: I move that the testimony of the witness in reference to receiving the tickets in December, 1911, be stricken out for the reason he says that he don't remember which way the tickets were received.

The COURT: The testimony will show—in view of his entire testimony as to receiving the ticket, it will be for the jury to determine from that and other testimony what the facts may be respecting that.

Exception to the defendant.

And to this ruling and action of the Court defendant then and there excepted and saved his exception.

(Testimony continued:) When the Adams Express Company delivered this package to me, it was delivered at my home. I do not know what official or agent of the Adams Express Company delivered it to me. I did not tell Mr. Landon the name of the agent that delivered it to me,—I did not know. I did not tell him that I received that ticket, by the Adams Express Company, I told him I received a package.

Q. So that there may be no mistake about this, I wish to call your attention to your testimony: "Q. You got an express package? A. I think the ticket was in it—Adams Express. Q. Adams Express? A. Yes Sir; I would not swear to it, I had it here this morning, but lost it, I don't remember whether it was Adams Express or American—it was one of them." But it was some express company wasn't it?

A. Yes sir.

Q. These quarter tickets—they have not yet been in evidence—do

you say that these quarter tickets are the same kind you received, of this International Mining and Investment Company?

A. I would not say much about the quarter tickets. I never got very many of them. They were of the same general nature.

84 I think about the only difference in the dollar and the half dollar tickets is that they have got a fifty and a twenty-five on them. I think that is about all—I think they are a different series—that is all. It is the same investment company.

The ticket last identified by the witness was put in evidence without objection. Same is in words and figures as follows:

(Here follow fac-similes marked page 84.)

Face of Exhibit H: —

Back of Exhibit H: —

Back of Ex F. Mur

THE INTERNATIONAL MINING AND INVESTMENT CO.

This Certificate will not be valid if pieced, mutilated, disfigured or in any way canceled or its number altered.

List of Dividends.

1900	Common Stk. 16 per cent	$16,000
1901	" "	
1902	" "	
1903	" "	
1904	Preferred Stock $500 each	1,000
1905	" "	300 " 1,000
1906	" "	100 " 1,000
1907	" "	60 " 1,500
1908	" "	40 " 2,000
1909	" "	20 " 2,000
1910	" "	10 " 2,000
1911	" "	8 " 2,400
1912	" "	5 " 3,000

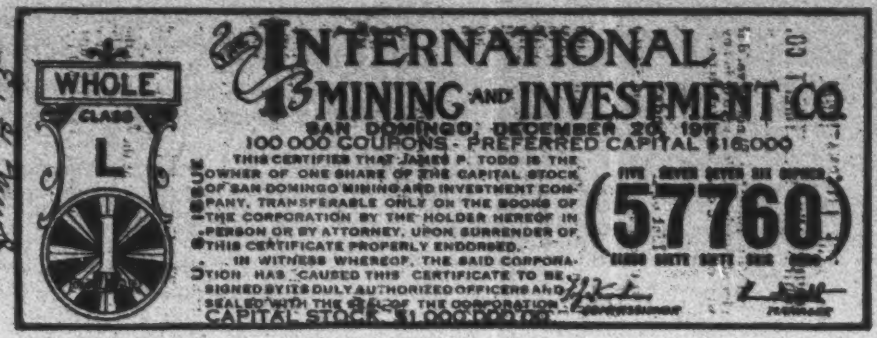
Approximations

100	Preferred Stk. $12	$1,200
100	" " 10	1,000
100	" " 8	800
100	" " 6	600

Terminals

999	Preferred Stk. $5	$4,995
999	" " 4	3,996
999	" " 4	3,996
999	" " 2	1,998
3692	Dividends Amounting to	$57,485

This Certificate is an original of a duplicate, the latter being retained at headquarters by the management of the company and at the consent of the holder hereof. Ample deposits will be retained in National Banks to enable local agents to promptly pay all dividends upon the surrender of said duplicate coupons.



Back of Exhibit 3.

Back of Ex 3 Mun B.

THE INTERNATIONAL MINING AND INVESTMENT CO.

This Certificate will not be valid if altered, mutilated, defaced or in any way encumbered or the number blurred.

List of Dividends.

1900	Common Stk. 16 per cent	$16,000		
1901	" "			
1902	" "			
1903	Preferred Stock $500 each		1,000	
1904	" "		200	1,000
1905	" "		100	1,000
1906	" "		60	1,500
1907	" "		40	1,000
1908	" "		20	1,000
1909	" "		10	1,000
1910	" "		5	2,500
1911	" "			3,000
1912				

Approximations

100	Preferred Stk. $12	$1,200
100	" " 10	1,000
100	" " 8	800
100	" " 6	600

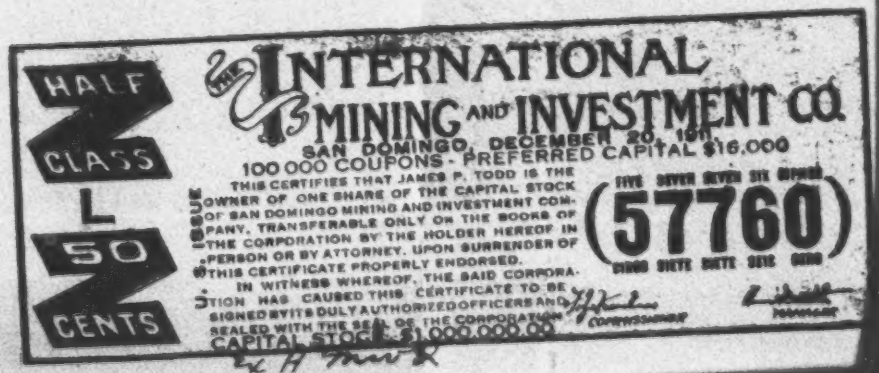
Terminals

999	Preferred Stk. $5	$4,995
999	" " 4	3,996
999	" " 4	3,996
999	" " 2	1,998

5492 Dividends Amounting to $57,485

This Certificate is an original of a duplicate, the latter being retained at headquarters by the management of the company and at the consent of the holder hereof. Ample deposits will be retained in National Banks to enable local agents to promptly pay all dividends upon the surrender of said duplicate coupons.

Face of Exhibit 4.



Ex H Mun B

85 (Testimony continued:)

Q. Mr. Todd, when you were examined at the preliminary, what did you say with reference to the letter sent on the 17th of September?

A. I don't remember what that letter was—if I had the letter, may be I could tell you what I said about it.

Q. Can you state whether or not that was received—was sent to you by the Adams Express Company?

A. Yes sir, that was not sent by express September 17th. That was sent by mail.

Q. How did you remember that, Mr. Todd, you say you can't recall when they were sent by express and when by mail?

A. I only received two packages by the Adams Express—by express, being one that was received years ago and one on December 18th. I can't remember what denomination the tickets received by me in September were,—whether it was a dollar, a whole or two halves—I can't remember. It was either a whole or two halves. Might have been quarters for all I know,—some quarters—or might have been a half and two quarters. As I say, I wrote for a whole ticket—I prefer-ed a whole ticket all the time; If he didn't have that why *would he* send what he had. These were the tickets I refer-ed to (indicating).

Mr. O'Donnell then offered in evidence Exhibits G & H. Same are in words and figures, as follows:

(Here follow fac-similes marked page 86.)

87 Exhibits F-G-& H were not among the papers in the possession of the defendant at the time of his arrest.

Q. You say on September 17th or thereabouts, you received the ticket introduced in evidence, by mail?

Mr. LANDON: That is objected to; he didn't say that—he said similar ticket.

A. A similar ticket, yes sir. They were similar tickets except the number, was all. I don't remember the date—they were dated for that month—September.

Q. Now Mr. Todd, how were you certain that you received those tickets that you have just identified—I mean similar tickets—are you certain you received them by mail?

A. I just stated a while ago that I received two express packages, one was several years ago and the other was in December, so if I received them it must have been by mail.

Redirect examination by Mr. LANDON:

Q. Mr. O'Donnell called your attention to this written transcript—did you ever read that over, or have you seen it before?

A. No sir. I never had anything to do with writing it up, or anything of that kind.

(Witness excused.)

J. W. EASLEY sworn as a witness on the part of the Government, testified as follows:

Direct examination by Mr. LANDON:

I was sworn in this case yesterday. My name is J. W. Easley. I live in Sedalia, Now. I was living in Parsons, Kansas in December, 1911, and sometime prior thereto. I lived at Parsons, Kansas about eighteen months. I am acquainted with the defendant Fremont Weeks,—I used to be acquainted with him at Sedalia, I think five or six to eight years—I don't know just how long ago—several years.

Q. Mr. Easley, I show you here Exhibit 2 and ask you if it bears your signature, and if it was written by you (showing witness paper).

A. Yes sir. That is my letter. I wrote it at Parsons, Kansas.
88 I wrote it and put an express check in it for a dollar, and mailed it to Fremont Weeks, Kansas City, Missouri, in an envelope—addressed to Mr. Weeks—to Fremont Weeks. Then I put it in the Postoffice.

Mr. LANDON: I offer this letter in evidence, Exhibit No. 2.

Mr. O'DONNELL: The same objection as heretofore as to evidence taken from Mr. Weeks' room.

The COURT: The objection will be overruled.

Exception to defendant.

And to this ruling and action of the Court defendant then and there excepted and saved his exception.

Counsel for the Government then read Exhibit 2 to the jury. Same is in words and figures as follows:

(EXHIBIT 2.)

DEC. 1-11 PARSONS KAN.

FRIEND WEEKS if i Dont kech sumthing this month i think i will quit.

Send me 2.50 1.25 find inclosed 1.00.

yours J W EASLEY

1423 *Broadway, Par., Kan.*

(Testimony continued:) In the expression "Send me two fifties," I referred to half tickets. The whole tickets were a dollar and the half tickets were fifty cent tickets. They were fifty cent tickets—that is a whole one. Two fifty cent tickets similar to the fifty cent tickets you show me. The twenty five referred to would be a quarter ticket. The fifty cent tickets were fifty cents a piece, and the twenty-five cent tickets were twenty five cents. In response to this letter Exhibit 2, I received the ticket called for therein. They were similar to the ones you have shown me. They were the same—they were—excepting the numbers—the same. They were in the same company—the International Mining & Investment Company. I got them by mail—they came by mail—at Parsons, Kansas. They sometimes came from Parsons. They were ordered from Kansas City, but I don't know that I am getting them from Kansas City, Missouri—I don't know where they came from sometimes. I could not recollect about these tickets—they were ordered from Kansas City.

89 Q. Sometimes they didn't come from Kansas City—this particular time, in December, Mr. Easley?

A. I could not tell you—I don't pay no attention to the particular time. I never bought any except from Kansas City, Missouri. I got some from Oklahoma,—I could not tell you how long ago—what date. I could not say whether I got any in December, December 18th—but they were ordered from Kansas City, Missouri—but I could not tell you no special fact, where they would come from. I don't know who I got them from in Oklahoma—I don't know the name—I can't tell you just exactly. I received tickets in response to this letter. I have been acquainted with Mr. Weeks several years. I have only been getting tickets from Mr. Weeks about six or seven months, that, previous to two years. I had probably bought some before, that is way back. Sometimes I got them once a month, sometimes once in two or three months—every month or two perhaps. I could not tell you the date whether in December 1911, October, September, 1911—I could not tell you anything about the month I got them in.

Q. I show you here Exhibit 4 and ask you if that is in your handwriting—if you signed that letter?

A. You see I never kept account of what month I bought them in. (Witness examines paper.) Yes, that is my letter—that is my handwriting. I wrote this letter at Parsons, Kansas. I put a dollar, just as I have said before—got a dollar order from the American Express Company and mailed it to Kansas City, Missouri.

Q. I show you Exhibit 12 and ask you if that is your handwriting and signed by you?

A. Yes sir, that is my handwriting. I mailed that by express yes sir, I think that was mailed by express, as I recollect it, to Fremont Weeks, Kansas City, Missouri. I sent this letter by express, as well as I can recollect—I may have sent it by mail.

Mr. LANDON: I offer in evidence Exhibits 4 and 12.

Mr. O'DONNELL: I make the same objection.

The COURT: The same ruling.

Exception to defendant.

90 And to this ruling and action of the Court defendant then and there excepted and saved his exception.

Mr. Landon then read the Exhibits last offered to the jury. Same are in words and figures as follows:

(EXHIBIT 4.)

PARSONS, KANSAS, *May* 21-21-10.

FRIEND WEEKS: Sir i lande her thursday i shiped good 18th i gues you have got then Just send me 2 Statement no goods if you havent Eney agent hear i will try and get one to handel they goods wat will i get if i get you a man to hendle they goods I am Prety Surtin i will Bee in K. C. nex month Probeley to Stay your

J. W. EASLEY,
1714 *E. Broadway, P. K.*

(EXHIBIT 12.)

Letter reads as follows:

SEDALIA, MO., *Nov.* 16-09.

FR-END WEEKS: Find in closed Ex check for $7.30 for goods 1000.
Comshin..... 2.70

$10.00

Send me

42		25	10
20		50	10
5	one		50
			25.00

J. W. EASLEY,
110 *W. 2nd St., Room* 3.

Back of letter reads as follows:
Easley, Dec. 25.00.
$7.30.

91 (Testimony continued:) The case referred to here is *ts* International Mining & Investment case. I told him I would try to get someone to handle the case—that is the substance of it. I could not tell you exactly how many times I got tickets at Parsons, Kansas, similar to the ones you have shown me here. I can tell you as near as I recollect—I didn't put it down. I think about six or seven times, probably. I received them through the mail at Parsons, Kansas. I did not receive any at Parsons, Kansas, in any other way than by mail.

On cross-examination by Mr. O'Donnell the witness further testified as follows:

Q. Now, Mr. Easley, your testimony was given on December 29th of last year, on Mr. Weeks' preliminary examination, before Commissioner Thomson?

A. Yes sir.

Q. And you say that you never received any ticket from Mr. Weeks excepting by mail?

A. At Parsons, I said—at Parsons.

Q. On the preliminary examination, were these questions asked you and these answers given by you:

"By Mr. LANDON:

Q. Mr. Easley, have you ever bought these tickets, similar to the one I hand you, of Mr. Weeks?

A. Yes sir.

Q. How did you get them from Weeks?

A. Well, how did I get them?

A. Yes.

A. I got them by express."

Did you make that answer, Mr. Easley, when you say, "I got them by express?"

A. I made that answer, when I got them at Sedalia I got them by express. I got them in Sedalia—I got some by express.

Q. Was this question asked you, "How many times did you get them by express?

A. All of three or four times, I guess.

Q. At Parsons, Kansas?

A. Yes sir."

Were those questions asked and those answers given?

A. I think I answered that both ways—I know I had gotten them both ways, sometimes by mail and sometimes by express. I know I got them both ways—at Parsons, Kansas,—that is the way it is in my mind. I did not get them both ways at Sedalia.

Q. At Parsons you got them by express?

92 A. By mail—I don't think I got any by express there.

Q. (Reading:) "Q. And the express came from Kansas City, Missouri? Objection sustained. Q. Did the express packages come to Parsons, Kansas? A. Parsons, Kansas—they came from Kansas City"—so that all the tickets at that time you received came by express—is not that so?

A. I don't think I said all came by express—I know I got some of them both ways.

Q. So that when you stated a moment ago to Mr. Landon that you had received all of the tickets you get from Mr. Weeks, by mail you were stating what was not true?

Mr. LANDON: That is objected to.

The COURT: That is not the way to present the question.

Exception to the defendant.

And to this ruling and action of the Court defendant then and there excepted and saved his exception.

(Testimony Continued.)

Q. Which is true?

A. Well I have got them both ways, is true. The ticket I received on or about December 1st was received by express, at Parsons, Kansas. I didn't keep any account particularly—I know I have got some both ways.

Q. Do you know how you received the ticket that you say you received the first of December, about—do you know what way you received it? The first of December, 1911.

A. Well, it seems to me like that the first package I received I got by express, but the most of the packages I got at Parsons, came by mail, I know. I didn't keep the details in my mind. I don't think, in December—I got any whole tickets, I think there were half and quarters, probably—I could not say exactly I know what the denomination is. That ticket, Exhibit 8 has fifty cents on the end of it. That is a fifty cent or half ticket. I received one similar to that. I don't know whether I have ever received a whole ticket from him—I guess I have. I don't think I received a ticket similar to Exhibit D on or about December 1st. I have received tickets of that kind—I have received quarter tickets. They were duplicates of this—Exhibit F—of course they were different months—
93 different dates and numbers. I could not say by just what conveyance I received these tickets in December. I could not say whether they were from Oklahoma or Kansas City. I know I got some from Oklahoma—I could not say what month it was.

Q. Now when you got them from Oklahoma, could you say whether they came in packages like that or how they came?

A. When they came by express they came in that kind of packages. That envelope is what I received the tickets in by express from Mr. Weeks.

(The envelope identified by the witness was marked Exhibit I.)

Q. You say Exhibit I is a duplicate of the envelope in which the tickets were received from Mr. Weeks?

Mr. LANDON: He didn't say duplicate.

Q. You may state whether that is true?

A. That is the kind of envelope I got it in and the company it came from when I received any from Kansas City by express. As

near as I can recollect, I got them from the express company—I think it was the Adams—I could not say for certain. They always came in that form when I received any by express.

On redirect examination by Mr. LANDON the witness further testified as follows:

Q. Mr. Easley, he has read to you from this written statement of your testimony—did you ever have anything to do with writing this up, this testimony?

A. No sir. I have never read it over or seen it before. I am giving my best recollection of the matter, as I now remember it, to this jury. If I don't get it right it is because I don't recollect it right.

I am seventy-seven years old. The M. K. & T. and Frisco run into Parsons—that is all. I never drew anything from these tickets that I purchased from Mr. Weeks, in Parsons. I have drawn a little at Sedalia.

Mr. O'DONNELL: That is objected to—the question is improper as being on redirect examination.

The objection was by the Court overruled and exception to defendant.

And to this ruling and action of the Court defendant then
94 and there excepted and saved his exception.

(Testimony continued:) I have drawn probably a dollar or two from these tickets at Sedalia. I don't recollect the amount.

(Witness excused.)

A. D. NAYLOR called as a witness on the part of the Government, being duly sworn, testified as follows:

My name is A. D. Naylor. I live in Kansas City, Missouri. I am Superintendent of the Missouri Division of the American Express Company—the American Express Company. I have held that position a little over two years. I know what express companies go into Parsons, Kansas, from Kansas City, Missouri—the American Express Company and the United States Express Company. The American Express Company does a general express business, transportation of parcels, valuable matter and so forth—packages, money orders by express. The American and the United States are the only express companies running into Parsons, Kansas, and were during 1911.

On cross-examination by Mr. O'Donnell the witness further testified as follows:

The Adams Express Company does not go into Parsons, Kansas, and has never gone in there—not to my knowledge. If a package was sent by my express company, similar to that (indicating) excepting for the writing, the way bill record would show the record of its being sent. Our books or records are separated between money and freight—there are no books called particularly money books—the business is separated between money and freight, of course.

Q. That is the title—It does not mean that it is money that is sent when it is sent and recorded in the money book?

A. It is money or valuables, of course. We have certain books in which the sending of money or valuables is recorded and other books in which the sending of freight is recorded. If an express package is an envelope of that kind (indicating), of that form was sent, say from Kansas City to some outlying town, it would be classed as a valuable package, or sealed package, it is sometimes called a sealed package. When it is a sealed package of any
95 kind it is sent through the money department and the books kept by that department would have a record of the sending of it. If a package or packages were sent from Kansas City by our line or express company in the months of September, November and December of 1911, the out-trip record—that is what we call it—the out-trip record would show it. It is a record of business forwarded. We have separate books for the city business and those at the Union Station. If a package was deposited with our company in Kansas City, Missouri, during the months mentioned of last year, it would be received either at 1109 Grand Avenue or at the Depot—that is, at the Union Depot. Most likely at 1109 Grand. If such a package was sent from Kansas City to a Mr. J. P. Todd or Mr. J. W. Easley at Parsons, Kansas, during these months, our record should show the sending. I do not know whether or not, at the request of the Government, I have made any search or had my superintendent make any search for records or packages sent during those months to Parsons, Kansas.

Q. But, as I understand, Mr. Naylor, you do know that if packages were sent to Mr. Easley or Mr. Todd, from Kansas City, Missouri in September, November and December, 1911, that your books would show a record of the sending?

A. If sent by the American Express—Yes sir, and the name of the consignee would be shown. If such a package was sent to Mr. J. P. Todd that would be shown. If sent to Mr. Easley, Mr. Easley's name would be shown—Mr. J. W. Easley.

On redirct examination by Mr. Landon, the witness further testified as follows:

Q. Mr. Naylor, if a package were delivered to your company to be expressed in that envelope of the Adams Express Company, such as Exhibit I, would the American receive it and ship it out?

A. They would. The fact that it was in an Adams Express Company package would cut no figure whatever. These records that are kept of the shipments do not state whether or not they are voluminous—they just give the package. The out-going business of the American Express Company during the month of December was pretty heavy—very heavy.

Witness excused.

96 OWEN MCKINNEY, called as a witness on the part of the Government, being duly sworn, testified as follows:

Direct examination by Mr. LANDON:

My name is Owen McKinney. I live in Brookfield, Missouri. I am an engineer for the Burlington. I have been running an engine about six years. I know Mr. Fremont Weeks, the defendant. I have been employed by the railroad company about twenty years. I have known Mr. Weeks about three years, I think it is about three years.

Q. I show you here Exhibits 17, 18 and 19 and ask you if they were written by you or for you?

A. They were not written by me but they were written for me. I sent the letters to Fremont Weeks, Kansas City, Missouri,—by a messenger—by a baggageman on the train running in here every day. Each one of these letters was sent to him that way.

Mr. LANDON: I offer Exhibits 17, 18 and 19 in evidence.

Mr. O'DONNELL: I make the same objection as heretofore.

The COURT: The objection will be overruled.

Exception to defendant.

And to this ruling and action of the Court defendant then and there excepted and saved his exception.

The letters last identified as Exhibits 17, 18 and 19 were received in evidence and read by Mr. Landon to the jury.

Exhibits 17, 18 and 19 are in words and figures as follows:

(EXHIBIT 17.)

J. H. Fuoss,
The Jeweler.
Diamonds and Watches,
213 N. Main Street.

BROOKFIELD, MO., *Sept.* 21, 1911.

Fremont Weeks, Esq.

DEAR SIR: I received $185.00 worth of tickets. I return you $60.00 in unsold tickets leaving $125.00 less 20% $100.00. I enclose 25.00 in winning tickets and $75.00 in cash.

Please send me 75-1.00 tickets 150-50¢ tickets 50-25¢ tickets.

Resp't-, OWEN McKINNEY.

97 (EXHIBIT 18.)

J. H. Fuoss,
The Jeweler,
Diamonds and Watches,
213 N. Main Street.

BROOKFIELD, MO., *Nov.* 15, 1910.

Fremont Weeks, Esq.

DEAR SIR: Please find enclosed $240.00 of which $50.00 is in winning tickets and $190.00 is in cash.

Please duplicate last month's order and oblige,

Yours Resp't,

OWEN McKINNEY.

(EXHIBIT 19.)

J. H. Fuoss,
The Jeweler,
Diamonds and Watches,
213 N. Main Street.

BROOKFIELD, MO., *Nov.* 15, 1910.

Fremont Weeks, Esq.

DEAR SIR: I return you $50.00 worth of unsold tickets out of 170.00. I sold 120.00 worth, 20% leaving 96.00. I also send you 18.00 Winners, making 78.00 which you will find inclosed.

Send me 75-1.00 tickets, 125 fifty cent Tickets, 50-25 cent Tickets.

Resp't,

[J. H. FUE.]*
OWEN McKINNEY.

98 (Testimony continued:) When I said, "Please send me seventy five one dollar tickets," I referred to the International Mining & Investment Company tickets, similar to Exhibit 1. By "One hundred and fifty fifty cent tickets," I mean International Mining tickets—half tickets—similar to Exhibit 20. And the twenty-five-cent tickets—the International Mining tickets,—similar to Exhibit F. I got the tickets in accordance with the letter. I got them by messenger bringing them down with him in a box. Sometimes I got them myself when I was in here,—from Mr. Weeks,—here. I would meet him down around the Union Depot. This letter (indicating Exhibit 18) refers to International Mining tickets, the same as you have shown me. Exhibit 19 also refers to similar tickets. I have been purchasing these tickets about eighteen months, I think. I was not purchasing all these tickets for my-self. The railroad men would take them in a club, and they would leave the money there at a jewelry store where we got our watches fixed.

Q. You wrote for the tickets and handled them for the balance?

A. Well, they would leave the money there and the tickets would come and I would give them to them—if I didn't come in they would get them themselves. I bought these tickets every month for about eighteen months. I was buying these tickets in December, 1911. During the year 1911, I think it would average one hundred dollars a month. I drew something. I think we hit one five rundred prize a couple of times with a twenty five cent ticket, and I think we hit a thousand dollar prize with a twenty five cent ticket. Yes, I received a paper similar to that Exhibit 21—from Mr. Weeks, through this young man on the baggage car. I would receive a paper similar to Exhibit 21 once each month. That was the paper I looked for to see whether I had drawn anything or not.—the number appears on that—a number appearing on that was supposed to be a winner. When I received these sheets I compared the numbers of the sheets with the numbers on my tickets.

[* Words enclosed in brackets erased in copy.]

On cross-examination by Mr. O'Donnell, the witness further testified as follows:

The way I received these tickets was by some friend of mine, he was a passenger that ran up here every day—he sent them in
99 a box. Mr. Weeks never sent them to me by express or mail. During this period of eighteen months I have always received them by a messenger that was known to myself and Mr. Weeks, or by myself. Brookfield is in Missouri—I did not receive them from him from any other state. I received these tickets all by the same messenger boy, or I would get them myself. I ran both ways out of Kansas City, to hit the Hannibal, Quincy and St. Jo, and if I happened to be in here I would get the tickets and take them down.

Witness excused.

H. M. NORTON, called as a witness on the part of the Government, being duly sworn, testified as follows:

Direct examination by Mr. LANDON:

My name is H. M. Norton. My home is in Council Grove, Kansas. I have lived there all my life—about twenty years. I am a fireman on the Missouri Pacific. That has been my business about six years. I know the defendant Fremont Weeks. I have, during the past two or three years, purchased tickets, similar to Exhibit 1, and F and 20. I purchased them every month for a period of at least sixteen or eighteen months. I myself, took one or two tickets a month. I got them here of Mr. Weeks. I took them to Council Grove myself. I purchased some of these tickets for myself. I did not purchase any for any body else, but I took them out there. We would chip in and take them. I have drawn five dollars is the highest—from the tickets. I have received papers similar to Exhibit 21. I received them myself here in Kansas City, from Mr. Weeks.

Q. I show you here Exhibit 16 and ask you if it is in your handwriting, and if you wrote the letter?

A. I did. I wrote the letter at Council Grove, Kansas. The letter was addressed to Mr. Weeks—I gave it to him in person. I brought it here to Kansas City and gave it to him. The only reason of that was this: I had an extra passenger out of Council Grove at the time I wrote him the letter and put it in my pocket and never mailed it, but I gave it to him in person. I didn't put it
100 in an envelope, to the best of my knowledge—I was going to send it to him, but I didn't on account of that I was called to come down here.

Mr. LANDON: I offer 16 and 16-A in evidence.

Mr. O'Donnell offered the same objection as heretofore.

Exception to defendant.

And to this ruling and action of the Court defendant then and there excepted and saved his exception.

Exhibits 16 and 16-A were taken in evidence and read to the jury. Same are in words and figures as follows:

(EXHIBIT 16.)

Letter read as follows:

COUNCIL GROVE, Ks., 2-23-1911.

Mr. Fremont Weeks.

DEAR SIR: I rec'd Tickets from Bishop $50.00 Allso returns and had only one winer which was $5.00 and I will cash that one and when shall I turn it in. it is $5.00 ticket No. is 21307. Let me know what to do with this ticket I will give him $5.00 for it Pat will get sore at me but I won't go around him I think I can sell these tickets allright have sold 5 allready and

(EXHIBIT 16—Cont'd.)

Back of sheet reads as follows:
Liberty 6 55 A.
Cameron 8 00.
Brookfield 10 00.
Quincy 1 A. M.
Galesburg 4 07 A. M.
Mendota 5 50 A. M.
Aurora 7 40 A. M.
40 m. late.

(EXHIBIT 16a.)

have only had them a couple of hours. Did you receive money for the other tickets and was it allright let me know about this ticket and when to turn it in

Yours resp't,

H. M. NORTON,
Co. Grove, Ks.

(Testimony continued:) I don't remember to what tickets I referred. They were Invest. Company tickets, similar to the ones you show me—Exhibit- 1 and 20 and so on.

On cross-examination by Mr. O'Donnell, witness further testified as follows:

Q. Now, Mr. Norton, I will ask you if it is not a fact that Mr. Weeks sent tickets to you by railroad men or messengers
101 out of Council Grove?

A. Yes, he sent them by me mostly—he sometimes sent them to me by some railroad men or some passenger. I was getting these tickets of Mr. Weeks about nine months, I think, as near as I can remember it.

Witness excused.

JOHN H. KRUSE, called as a witness on the part of the Government, being duly sworn, testified as follows:

Direct examination by Mr. LANDON:

My name is John H. Kruse. I live at Sedalia, Missouri. I have lived there forty years. I know the defendant Fremont Weeks. I have known Mr. Weeks I guess pretty near twenty years. I knew him after he came to Kansas City, but I lost track of him for several years. I didn't know what had become of him until a few years ago. I have purchased of Mr. Weeks during the last two or three years tickets similar to Exhibit 1 and also tickets similar to Exhibit 20, and also tickets similar to Exhibit F. I could not exactly say how long I have been purchasing such tickets. I might have had some two or three years ago, and then I made several trips to Colorado and drop-ed off. I was living at Sedalia when I first took them. I got them by express there at Sedalia. They were supposed to come from Kansas City, Missouri. They were supposed to come from Mr. Weeks, he was the only party I knew here.

Q. I show you Exhibits 13, 14, 15 and 15½, and ask you if they were written by you, and are in your handwriting, or written for you?

A. Yes, sir, they were written at Sedalia and were sent to Mr. Weeks—by express. I just took the money—the orders—and put them in the envelope and sent them by express.

Mr. LANDON: I offer in evidence Exhibits 13, 14, 15, and 15½.

Mr. O'DONNELL: I make the same objection.

The COURT: The same ruling.

Exception to defendant.

And to this ruling and action of the Court defendant then and there excepted and saved his exception.

102 Exhibits 13, 14, 15 and 15½ were then read in evidence; same are in words and figures as follows:

(EXHIBIT 13.)

Sedalia Mo
Oct 17th 1911

	Cash	$10.10
	Win	4.00
	Ret	10.00
Tripps	Bill	50
	Com	5.40
		$30.00

Send 40.½ 20.¼
this was a hard month here We haid the State fair. and the M. K. & T. men are out on a Strake.
So it was hard to Sell, or do Much here this month.
Send in Cf Tripp to Me

J. H Kruse

(EXHIBIT 14.)

One side of sheet reads as follows;

Comison	$835
Winers	375
Returned	1400
Cash	1890
	4500

J. H. Kruse.

Other side of sheet reads as follows;

Jun 20

John Legler
$35.00

10—100	E Johnson
40— 50	Coal
60— 25	Potatoes
$45.00	Bread

(EXHIBIT 15.)

Sedalia Mo
Nove 10th 1910

Return	900
Winers	550
Cash	620
com	430
	$25 00

Send me $20.00 in ½ & ¼ I Send in early this time as I want to go West in the morning Will bee gone for ten days or More So I will leave this with Mr. Easley to Send.

J H K

Cf Tripp

(EXHIBIT 15½.)

Letter reads as follows:

103

Sedalia Mo
Nov 16th 1911

Cash	5 20
Winers	5 75
Returned	10 00
Com	4.05
	$25.00

Send 40.½. 20 ¼.
I think I can Sell them if the Railroad Men go back to work on M. K. T. this month they have no money and the Grand Jurie has been in Sesion here for 2 week So we haid to work Kinna easy and I waited on some of the R. R. men untill last night but couldent See them all So I dident get read of all
Send to me Cf Tripp

(EXHIBIT 15½.)

Back of letter reads as follows:

335

26800
13150
13650

26800
13050
2)13750
68.75
12 50
80.25

(Testimony continued:) These refer to these tickets and coupons shown to me. This part of the letter here (indicating) means that they were supposed to have been sent with one of these. It was sent with—it refers to the tickets. That about $8.35 means that is what he gave off if we took a certain amount,—that is what we make. "Winner" was the coupon that wins a prize. "Return 13" means tickets that we had not taken—tickets unsold. That "Cash, $18.90" means cash from the sale to tickets. Exhibit 15 refers to the tickets also, that "Return, $9.50" refers to the return of tickets, and "Winners five-fifty", refers to the winning ticket. That—"I send in early this month, as I want to go West" refers to the same matters I have already explained—commissions and so forth. That—"Send

twenty halves and twenty one quarters" refers to tickets—to tickets like these.

Witness excused.

J. P. TODD, recalled for further examination, testified as follows:

By Mr. O'DONNELL:

Q. Mr. Todd, last December, before the preliminary ex-
104 amination of Mr. Weeks, you came to Kansas City, did you not?

A. Yes, I was summoned. After coming to Kansas City I came to see you—no one sent me—I came for the simple reason that I didn't know where I was at—whose witness I was or what. No one in Parsons, Kansas, told me to consult a lawyer in Kansas City, I was with Mr. McKinney.

Q. I will ask you if it is not true that you refused to testify on that preliminary examination until Mr. Landon and Mr. Lyon took you back in the office and promised you that you would not be prosecuted?

A. It is a fact that I refused to testify. Upon Mr. Landon and Mr. Lyon having an interview with me I came back and went on the stand and testified. Mr. Lyon or Mr. Landon did not promise me immunity if I testified in this case. Mr. Lyon called me in there and showed me where I had made a mistake in refusing to testify—I thought it was you had me summoned—that I was your witness.

Q. Is it true that you refused to testify until Mr. Lyons threatened to have a complaint issued, or as soon as he did that you testified?

A. Yes sir—I seen where I had made a mistake, and Mr. Lyons called me into the room.

Q. Is it a fact that until Mr. Landon threatened you with a complaint, you refused to testify—is that true?

A. I don't know as that is true—I don't know what he called me in there for—I suppose he was making out a complaint—anyhow, I seen where I had made a mistake and did testify. I don't know what he was doing, but I presume that was it—threatened me with imprisonment—he was writing something. You came in and asked him what he was going to do. Afterwards I testified.

Q. And the testimony that you gave on the 29th is different from the testimony that you have given now?

Mr. LANDON: That is for the jury.

The COURT: That is for the jury.

A. I don't think it is.

On direct examination by Mr. Landon, witness further testified as follows:

I came to Kansas City for the preliminary hearing upon
105 a subpœna from the United States Government, and when I got in at the Commissioner's hearing—I got in early in the morning. For that reason I did not see you until in the afternoon. I don't think I saw Mr. Weeks in the afternoon. I went to Mr. O'Donnell's office. I saw Mr. Weeks there.

Q. Tell what Mr. O'Donnell said to you in his office.

A. I went—I was in the Sheriff's office, the Marshal's office, waiting for the time the trial was set for, nine o'clock in the morning, my subpœna was for—but there was some mistake and it was not until afterwards. I was in there when Mr. McKinney came in. I was talking to him—I didn't know him before. I didn't know what side I was subpœnaed on or anything else. We were talking together there. I mentioned—asked him if he had met any one of the parties connected with it, and he said no, only the lawyers. He said that if I wanted to see Mr. O'Donnell, and I said, perhaps I better. I asked Mr. O'Donnell if there was any chance of their prosecuting me, and he said they could. I asked him how I could get out of it, and he said I better get a lawyer, and asked if I wanted him to represent me, and I said I better have someone there. I paid him five dollars. It has never been returned to me. He told me not to answer any questions.

Q. Now I will ask you if, when you came in the afternoon if this wasn't what I said to you—that we wanted but the principal—that we weren't after the fellow that was buying the tickets, but the fellow that was dealing in the tickets?

A. Yes sir, I believe that is what you said. Then I said to Mr. O'Donnell that I seen I had made a mistake and I told I was done with him. I had no other purpose about the matter but to tell the truth about the matter.

Witness excused.

OWEN MCKINNEY, recalled as a witness on the part of the Government, further testified as follows:

Direct examination by Mr. LANDON:

I was subpœnaed as a Government witness before the Commissioner last December. I got into Kansas City, about eight o'clock in the morning. I went to the Government Building when
106 I got here. From there I walked around the city some—I had a card from Mr. O'Donnell. A messenger on the train gave me the card. I did not see Mr. Weeks that morning. I saw Mr. O'Donnell that morning at his office. He was not there but he soon came in. We just spoke there and talked—I told him I was subpœnaed on the case. He said that he saw one of our Brookfield attorneys at the Library, or somewhere, he said if I wanted an attorney it would be a good idea to get the Brookfield man.

Q. You received a card from Mr. Weeks to go to Mr. O'Donnell's office?

Mr. O'DONNELL: That is objected to—he has not said that.

The COURT: He received a card by messenger boy.

On recross examination by Mr. O'Donnell, the witness further testified as follows:

Yes sir, I made that statement—the messenger boy or the baggageman on the train.

Mr. LANDON: I now offer in evidence Exhibits 6, 7 and 11 together with the letters therein contained, in Exhibits 6 and 11.

Mr. O'DONNELL: I make the same objection as heretofore.

The objection was by the Court overruled and defendant excepted.

And to this ruling and action of the Court defendant then and there excepted and saved his exception.

Mr. Landon then read Exhibits Nos. 6 and 11 and also 17. Same are in words and figures as follows:

(EXHIBIT 11.)

Envelope.

N H Two cent
7 Postage
A M Stamp
1911
ARK.

Mr. Fremont Weeks,
c/o Adams Express Co.—Union Station.
Kansas City,
Missouri.

Back of envelope shown figures as follows:

107	960		
	626		
	334		
	174	131	12900
	2)260		1256
	130		14150
	110		

One side of sheet within reads as follows;

Corrected account		
	Net	281.60
	Cmp	181.50
		100.10
	Exp	1.00
		2) 99.10
		49 55
		12 50
		62 05
	Cr Cash	48 30
	Due me	13.75

1–50	50 00
1–25	25 00
1– 5	5 00
9– 4	36 00
7–2.50	17 50
14–2	28
4–1.25	5
13–1	13
4– 50	2
	181.50

This is all I find from your figures

Back of sheet reads as follows;

Rec for Oct	970 00	186		
Ret – –	618 00	181 50		
	352 00	4.50		
Sold			281 60	
20%	70 40		186 00	
	281 60		95 60	
Coupons	150 50		1.00	
	131 10			
Expense express	1.00		2) 96 60	94 60
	½)130 10		48.30	47.30
	65.05			12 50
				59 80
½ Printing	12 50		[Due me]* Cr	48 80
	77.55			11.50
			½ error	2 25
			Bal due	13 75

You received $660.00 for Nov. Correct

[*Words enclosed in brackets and column of figures beginning "970 00" and ending "77.55" erased in copy.]

108 (EXHIBIT 6.)

Envelope.

Hotel Mayer
European
Peoria, Illinois

Peoria, Ill.
Nov. 20
6:30 P. M.
1910.

Two Cent
Postage
Stamp.

Mr. Fremont Weeks,
c/o Adams Express Co.
Kansas City, Missouri.

Union Station.

Two letters as follows:

On the road 11/16/10.

F. W.: If you have not sent in report—hold it until I call—will be at Blossom House about Monday if nothing happens. Am called up to Peoria, Ill., on a Land Deal and Law Suit in Connection.

Yours,

SIMS.

W. H. Mayer, Mgr., Hotel Mayer, European, 175 rooms all outside rooms.

Running hot and cold water, Local and Long Distance phone in every room.

Good Cafe in Connection 50 rooms, with bath.

Cor. Adams and Hamilton St. Peoria, Ill.

11/20-1910.

F. W.: Hardly think now I will be able to get to K. C. before Wednesday morning—May get in Tuesday evening. Might drop over to Blossom House after the evening trains. Might come in on Wabash 9:40 Tuesday evening. And see whether I am there or not.

In haste Yours &c.

J. D. S.

(EXHIBIT 7.)

Back of envelope shows figures, as follows:

1600		
275	1325	1325
	665	265
1325		
20	660	1060
26500		

(EXHIBIT 7.)

Return after 5 days to
Eno Chemical Company,
Sedalia, Mo.

Sedalia
Dec. 16
1-30 P.
19 11
Mo.

Two cent
Postage
Stamp.

Mr. Fremont Weeks,
Kansas City, Mo.

Exp. Co., U. D.

109 Mr. LANDON: I now offer in evidence this receipt book or order book that has been identified by the witnesses, and ask it be marked Exhibit 23.

Mr. O'DONNELL: I make the same objection as heretofore.

The Court overruled the objection.

Exception to defendant.

And to this ruling and action of the Court defendant then and there excepted and saved his exception.

Exhibit 23 was thereupon read to the jury, Same is in words and figures as follows:

110 (EXHIBIT 23.)

Form B–56

Factory Salesmen Drop Shipment Order
of
Smoking Tobaccos and Fine Cuts
For Account of

.....

(Name of Jobber)

.....191

The American Tobacco Company,
111 Fifth Avenue, New York City,

Ship direct from your factory, for our account, and forward us Invoice and Bill of Lading:

Name and address of retailer to whom shipment is to be made

Ship to (Name).....

Railroad Station .....

P. O. Address.....County.....State.....

.....

.....

Cartons Number	Size	Total Gr. or Doz.	Brand	Size and Style	Price

Coupons	$313 00
Printing March	30 00
March	30 00
Commission	200 00
Ossawatomie Loss	18 00
Cameron "	14 00
	$605 00

Gratis

Cash 673 00

605 00

Retailer's Signature .....2) 68.00

34 00

Jobber's Signature .....

Town..... State.....

.....Salesman

Carefully specify size and style of each brand ordered.
All orders must be for prompt shipment.

If not acceptable, return this order to

.....

.....

This offer is made exclusively by the American Tobacco Company's Salesman.

(In Exhibit 23 there are 100 or more pages similar to the above.)

11 Mr. LANDON: I offer the balance of these sheets in evidence, which may be marked later—I will not take time to read them.

Mr. O'DONNELL: We make the same objection.

The COURT: The same ruling.

And to this ruling and action of the Court defendant then and there excepted and saved his exception.

Witness excused.

J. P. TODD, recalled for further cross examination by defendant's counsel.

Cross-examination by Mr. O'DONNELL:

Q. I will ask you Mr. Todd, if this question wasn't asked you and this answer given at the preliminary trial, "Q. Did you have any idea of employing a lawyer when you came here? A. I went to a friend of mine in person and asked what was best to do." I believe it was not a legal friend?

A. It was just a friend in the shop.

Q. And I will ask you if this question was not asked by me. "Q. Mr. Todd how did you come to see me this morning?" And didn't you answer, "A gentleman over in the office asked if I wanted to see you. Q. Did you ask for a lawyer or how did you happen to come to see me? A. He said he had been up to see his lawyer. Q. Did you ask for a lawyer A. I said perhaps I had better see one—Q. And did you ask me for advice at that time. A. Certainly. Q. And paid me for it? A. Yes, sir"—you made those answers did you?

A. Yes sir.

Witness excused.

The Government here rested its case and the Court took a recess until the following morning.

The trial was resumed on the following morning, at ten o'clock, and the following proceedings had:

Mr. LANDON: As to the first count of the indictment, the District Attorney asked me to nolle.; and also as to the third count the District Attorney asked me to nolle. Also the fifth count.

Mr. O'DONNELL: Defendant objects to the permission being given and saves an exception.

Thereupon defendant's counsel asks for the direction of the verdict, and the discharge of the defendant upon the ground that
112 the evidence in-duced by the Government was not sufficient to establish the Government's case upon any of the counts of the indictment.

At the close of the evidence on the part of the United States defendant requested the Court to charge the jury as follows:

"The Court instructs the jury that you must find the defendant not guilty of the charges contained in count seven of the indictment."

Which request was by the Court denied, to which ruling the defendant then and there excepted and still excepts.

The COURT: The Court thinks that the evidence as to the mailing or as to the expressing, is too indefinite as to Counts 4, 8, and 9, to be submitted to the jury on those counts; and the consideration of those counts will be excluded from the jury. The case may go to the jury upon counts 2, 6 and 7 and the United States Attorney may take such action as he thinks fit upon the remaining counts.

Mr. LANDON: The remaining counts will be nolled now, by permission of the Court—that is counts 4, 8 and 9.

Mr. O'DONNELL: And to the ruling of the Court in overrulinng defendant's motion, defendant excepts.

Defendant moves that the Government be required to elect upon which of the remaining counts it will go to the jury.

The COURT: The evidence being the same, that will be overruled.

And to this ruling and action of the Court defendant then and there excepted and saved his exception.

Defendant's Evidence.

HOPKINS B. SHANE, called as a witness on behalf of the defendant, and having been duly sworn, testified as follows:

Direct examination by Mr. O'DONNELL:

My name is Hopkins B. Shane. I am Circuit Judge of the Thirtieth Judicial District of Missouri. That is located at Sedalia, Missouri. I am Circuit Judge at Sedalia, Missouri. I am
113 acquainted with the defendant Fremont Weeks. I have known him some twelve or fourteen years. I lived across the street from him for a number of years—until he moved to Kansas City—with his daughter—he still has two married daughters—young women living across the street from me. I think I know what the reputation of Mr. Weeks is for truth and honesty and integrity in the community in which he lives and has lived. Until this matter came up I never heard anyone question in regard to Mr. Weeks—anything whatever—it has always been good.

On cross-examination by Mr. LANDON, witness testified as follows:

I do not know exactly when Mr. Weeks moved to Kansas City—it is some four or five years ago, I think, His wife died right across the street from me—I can't remember the year now and his daughter married and left the younger daughter, and then he turned the property over to his married daughter and moved up here, and I have not seen much of Mr. Weeks since that time—he comes back there frequently.

Witness excused.

W. F. WALLER, called as witness on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. O'DONNELL:

My name is W. F. Waller. I am in the real estate and loan business, and the banking business—connected with the Commonwealth National Bank. I am a director in the bank. I live at the present time at 3417 Harrison. I am acquainted with the defendant Fremont Weeks,—have known him some twenty five or thirty years. I knew him in White City, Kansas, where he was on a farm with his father—he was raised on a farm near White City—I was publishing a paper at Council Grove, the County Seat, and I saw him quite often on the farm at White City. I moved to Sedalia and found him there. I don't whether he came there first or after I did. I knew him there—saw him pretty near every day—probably for ten years. He has been in my office in Kansas City several times and I have seen him on the street. Mr. Weeks' reputation for truth and honesty and integrity in the community in which he has lived has always been very good until this matter came up. This was the first time I ever heard anything against him—he always bore a good reputation.

Witness excused.

114 ROBERT H. DUCATE, called as witness on the part of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. O'DONNELL:

My name is Robert H. Ducate. I am Depot Agent for the Adams Express Company, Kansas City. I am acquainted with the defendant Mr. Weeks—have known him about four years. Up until about six months ago I believe Mr. Weeks' occupation was delivery clerk for the Adams Express Company at the Depot. I do not know what the reputation of Mr. Weeks is in the community in which he lives, for honesty and integrity. In the place where he was employed it was excellent.

Mr. LANDON: I move to strike out the testimony because it is incompetent.

The COURT: Yes, it is not in the community where he lives. It is where he was employed. The motion will be sustained.

And to this ruling and action of the Court defendant then and there excepted and saved his exception.

Witness excused.

R. A. BROWN, called as a witness on the part of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. O'DONNELL:

My name is R. A. Brown, I am correspondent for the American Express Company. I have been with that concern about ten years. I had occasion to examine the books of the express company with reference to the consignments to a Mr. Todd and Mr. Easley at Parsons, Kansas, during the month of November, September, and December, 1911. I have the books in the room. They are the money records for September, October, November and December—I have the records issued at the Depot office and the records issued at the main office. We have a money department and through that department we send all stuff that is not classed as freight—you might call it that, yes. The books of the American Express Company that I have got here in the Court room would absolutely show whether or not any article that would be sent through that department to Parsons, Kansas, during the months referred
115 to—whether or not such a consignment had been made.

Q. I hand you a book—tell the jury what the book you hold in your hand is—what record you class that as.

A. That is the money delivery record from August 24, 1911 to October 28, 1911, made at the city office 1108 Grand Avenue. I have examined that book in and around certain dates to determine whether or not it contains any consignment to Mr. Todd or Easley at Parsons, Kansas. I have a memorandum of the dates in my pocket. September 17th, I looked about one day before, and September 17th, and possibly five or six days beyond September 17th. The record don't show any shipment at all to J. P. Todd at Parsons, Kansas.

Q. Now, Mr. Brown, I hand you another book—tell the jury what that book is?

A. That is the money record book from October 30th, 1911, to December 31st, 1911, made at the city office. I have examined that record as to certain dates. I looked in this book from October 30th to about the 5th of December and possibly the 6th—and from the 17th of December until about the 23rd of December. There is nothing appears in this record on any of the days I looked that shows any consignment to J. P. Todd at Parsons, Kansas, or to Mr. Easley of Parsons, Kansas on any of those dates.

The book I hold in my hand now is the record of the money department made at the Depot office from November 30th, 1911, to January 5th, 1912. I have examined this record. That is the book made at the Union Depot for the money record. It does not show any consignment to J. P. Todd or Mr. Easley, at Parsons, Kansas on the dates that I have examined—I examined the same dates in this book that I did on the up-town book; That would be November 30th to the 4th or 5th of December, and from December 17th, to about the 23rd of December.

This book is the money book made at the depot from August 19, 1911, to October 11, 1911. I looked in this book from the 16th, of December to the 4th or 5th day beyond the 17th of September—

I didn't find any record of any shipment going to J. P. Todd at Parsons, Kansas, nor to J. W. Easley. This book (indicating) made at the depot office, runs from October 12th, 1911, to November 30th, 1911—I didn't look in that book—that is because it is in
116 between the dates that I looked—the dates were around September 17, and December 1st and 18th.

If any packages had been deposited with the American Express Company at Kansas City, Missouri, on or about the dates named, consigned to J. P. Todd or J. W. Easley, at Parsons, Kansas, the books that I have examined would contain a record of the shipment—would if they were small packages or sealed packages—if they were not of a class known as freight.

Q. Mr. Brown (showing witness Exhibit 1) If a package such as I hand you, Exhibit 1, containing one or two of these tickets that I hold in my hand—that is to say Exhibit "F" of Exhibit "G"—were deposited with your company at Kansas City, Missouri, you may state whether or not the record that you have described would contain an entry with reference to that?

Mr. LANDON: That is objected to.

The COURT: I don't see how that is competent.

Mr. O'DONNELL: We except.

And to this ruling and action of the Court defendant then and there excepted and saved his exception.

On cross-examination by Mr. LANDON, the witness further testified as follows:

These are the money records I have testified to. There are no merchandise records. A shipment of freight—or merchandise would not be in these records. If the package be less than four inches square and is marked merchandise, it would come through these records just the same,—less than four inches square. The size of a cigar box would go through the freight, probably. I occupied the position of correspondent for the American Express Company—that is my title, but I handle claims, claims that are made against the company on account of shipments—loss and damage to shipments.

On redirect examination by Mr. O'DONNELL, the witness testified as follows:

Q. As I understand you you say that all small sealed packages go *by* money.

A. Yes sir.

Witness excused.

117 J. E. BAXTER, called as witness on the part of defendant, being duly sworn, testified as follows:

My name is J. E. Baxter. I am a real estate agent. My office is 201 Scarritt Building. I am acquainted with the defendant Fremont Weeks. I have known him thirty years, I guess—as near as I can estimate it. At the time I knew him and for anything I knew to the contrary, his reputation was first class in every respect.

Witness excused.

FREMONT WEEKS, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. O'DONNELL:

I live at 1834 Penn. I have lived there about two years. I was living there in the month of December of last year. I have heard the testimony of the witness with reference to the method in which these tickets were shipped. The way I shipped the tickets to Mr. Todd and Easley—I most always gave them to a messenger on the road—I always gave them to a messenger on the road to take through. I have heard Mr. McKinney testify. I sent the tickets to Mr. McKinney by messenger that ran from Kansas City to Brookfield—a personal friend of mine—as we were all in the express business. I sent the tickets to Mr. Norton by putting them in the envelope and would give them to some railroad man that was going through and ask him if he would hand them to Mr. Norton when he got to his destination.

On cross-examination by Mr. LANDON, the witness further testified as follows:

I gave the tickets to messengers to take to the parties—express messengers—I can't recall the names now—one of them is dead one is dead and another is on another road—the M. K. & T. I met him when ever I would go over to make a transfer. That happened every day in the week—I would not meet him every day, but every day when he would come in on his run.

On redirect examination by Mr. O'DONNELL, the witness further testified as follows:

118 I did not pay the messenger anything for taking these tickets—I couldn't afford it.

Mr. LANDON (interrupting): You gave him free tickets?

A. No sir—I didn't even tell him what was in the package.

Witness excused.
Evidence closed.

Tickets and other exhibits were identified by the stenographer, up to and including No. 618, and thereupon the court took a recess until the following morning at 9:30 o'clock.

At the close of all the testimony the defendant requested the Court to charge the jury as follows:

"The jury are instructed that you must find defendant not guilty of the charge contained in count seven of the indictment."

Which request was by the Court denied, to which ruling defendant then and there excepted and still excepts.

And all of the foregoing exceptions were made and preserved before the cause was submitted to the jury.

Thereupon after arguments of counsel on behalf of the United States and defendant and oral charge of the Court the cause was given to the jury on the second, sixth and seventh counts of the

indictment; And in due time on the 9th day of November, 1912, the same being at the regular November Term, 1912, of the above Court, the jury returned into open Court its verdict, which said verdict is in words and figures as follows:

In the District Court of the United States for the Western Division of the Western District of Missouri.

No. 3007.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
FREMONT WEEKS, Defendant.

Verdict.

We, the jury find the defendant Fremont Weeks not guilty as charged in the second count of the indictment herein."

J. M. MILLER, *Foreman.*

119 "We, the jury find the defendant Fremont Weeks not guilty as charged in the sixth count of the indictment herein."

J. M. MILLER, *Foreman.*

"We, the jury find the defendant Fremont Weeks guilty as charged in the seventh count of the indictment."

J. M. MILLER, *Foreman.*

And thereafter on the 16th day of November, 1912, and at the said regular November Term, 1912, of the above court the following judgment and sentence was pronounced by the Court:

120 3007.

UNITED STATES
vs.
FREMONT WEEKS.

This day comes Leslie J. Lyons, United States Attorney, who prosecutes on behalf of the United States, also comes the defendant Fremont Weeks in his own proper person as well as by his attorney Martin J. O'Donnell; thereupon the motion in arrest and motion for new trial, heretofore filed herein, are by the Court overruled; thereupon the District Attorney moves that sentence now be pronounced upon said defendant. thereupon said defendant was called upon to state reasons if any he has why sentence should not now be pronounced upon him, and none being stated,

It is considered ordered and adjudged by the Court that the said defendant Fremont Weeks be confined in the Johnson County Jail,

at Warrensburg, Missouri, for a period of six (6) months, from this date and that commitment issue.

It is further ordered that said defendant Fremont Weeks pay a fine of one hundred dollars ($100.00) together with the costs of this action and that he stand committed until said fine and costs are paid.

121 And thereafter on the 16th day of November, 1912, during said regular November Term, 1912, of the above Court, defendant filed his petition for writ of error to the Supreme Court of the United States, together with his asignment of errors, and citation to the United States, which petition was granted and defendant was thereupon granted sixty days in which to file his bill of exceptions in this cause.

Wherefore, the defendant prays the Court to settle and allow this its Bill of Exceptions to all and singular the acts, rulings and orders of the Court in the premises, and that the same may be signed, filed and made a part of the record herein.

Now, Therefore, the Court, being fully advised in the premises, doth find the foregoing to be a correct Bill of Exceptions taken and saved on behalf of the defendant herein, and doth now sign the same, and doth order that the same may be filed and made a part of the record in this cause.

Given under the hand of the Judge of said Court before whom said proceedings were had, on this 18th day of December, 1912.

ARBA S. VAN VALKENBURGH,
Judge of the District Court of the United States for the Western District of Missouri.

We hereby consent that the foregoing is a full, true and correct Bill of Exceptions on behalf of the defendant herein, and agree that the same may be signed, filed and made a part of the record in this cause.

LESLIE J. LYONS,
United States District Attorney for the Western District of Missouri.
MARTIN J. O'DONNELL,
HARRY FARRABEE,
Attorneys for Defendant.

122 Afterwards, on the 4th day of January, 1913, the following Stipulation was filed, in words and figures as follows, to-wit:

In the United States District Court for the Western Division of the Western District of Missouri.

No. 3007.

FREMONT WEEKS, Plaintiff in Error,
vs.
UNITED STATES, Defendant in Error.

Stipulation.

It is hereby stipulated that the Clerk of the above Court in making the transcript shall set out only one of each of the exhibits mentioned in the Bill of Exceptions where there are several exhibits of same kind differing only as to number and denomination of ticket; that exhibit 24 may be pasted into the transcript as and for Exhibit 21 (of which it is a duplicate); the purpose and intent of this stipulation is to shorten the transcript in the Supreme Court.

MARTIN J. O'DONNELL,
Attorney for Plaintiff in Error.
LESLIE J. LYONS,
Attorney for Defendant in Error.

123 Afterwards, on the 10th day of January, 1913, the following order was filed and recorded, in words and figures as follows, to-wit:

In the United States District Court for the Western Division of the Western District of Missouri.

No. 3007.

FREMONT WEEKS, Plaintiff in Error,
vs.
UNITED STATES, Defendant in Error.

Order Extending Time in which to File Transcript of the Record.

Now for good cause shown the time in which plaintiff in error may file the transcript of the record with the Clerk of the Supreme Court of the United States is hereby extended to the 16th day of February, 1913.

ARBA S. VAN VALKENBURGH.
Judge of the United States District Court for the Western District of Missouri.

124 Afterwards, on the 14th day of January, 1913, a Præcipe and Stipulation were filed in words and figures as follows, to-wit:

In the District Court of the United States for the Western Division of the Western District of Missouri.

No. 3007.

FREMONT WEEKS, Plaintiff in Error,
vs.
UNITED STATES OF AMERICA, Defendant in Error.

Præcipe.

To the Clerk of the Above named Court:

The Plaintiff in Error desires to have included in the transcript of record forwarded to the Supreme Court the following parts of the record in the above Court:

1. 2nd, 6th and 7th counts of the indictment;
2. Process; } Held by U. S. Comm'r to await the action
3. Marshal's return; } of Grand Jury.
4. Motion to return property, books and papers, filed by Plaintiff; also list of property returned to defendant and retained by Plaintiff.
5. Ruling of Court thereon and Defendant's exception to said ruling;
6. Plea of Defendant;
7. Joining of issue;
8. Impanelling of Jury;
125 9. Verdict;
10. Judgment;
11. Bill of Exceptions;
12. Petition for Writ of Error;
13. Assignment of errors;
14. Bond and Approval;
15. Order allowing Writ;
16. Writ of Error.
17. Clerk's Certificate.

MARTIN J. O'DONNELL,
Attorney for Plaintiff in Error.

Stipulation.

It is hereby stipulated and agreed that the portions of the record above set forth shall be transcribed by the Clerk into the transcript of the record and forwarded to the Clerk of Supreme Court of the United States and shall constitute the transcript of the record in said cause in said Court.

LESLIE J. LYONS,
District Attorney of the United States for the Western District of Missouri,
MARTIN J. O'DONNELL,
Attorneys for Plaintiff in Error.

126 UNITED STATES OF AMERICA, *set:*

I, John B. Warner, Clerk of the United States District Court for the Western Division of the Western District of Missouri, do hereby certify the foregoing to be a full, true and complete copy of the record, bill of exceptions, assignment of errors, and all proceedings in said Court in accordance with the præcipe and stipulation for transcript filed herein, a copy of which præcipe and stipulation is hereto attached, in the case of The United States vs. Fremont Weeks, No. 3007, as fully as the same appears on file and of record in my office.

I further certify that the original citation and writ of error are prefixed hereto and returned herewith.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court, at my office, in Kansas City, in said District, this 13th day of February, A. D. 1913.

[Seal of the United States District Court, Western Division, Western District of Missouri.]

JOHN B. WARNER,
Clerk U. S. District Court.

Endorsed on cover: File No. 23,551. W. Missouri D. C. U. S. Term No. 461. Fremont Weeks, plaintiff in error, vs. The United States. Filed February 17th, 1913. File No. 23,551.

In the Supreme Court of the United States.

OCTOBER TERM, 1912.

FREMONT WEEKS, PLAINTIFF IN ERROR,
v.
THE UNITED STATES.
No. 976.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

MOTION BY THE UNITED STATES TO ADVANCE AND PLACE ON THE SUMMARY DOCKET.

Comes now the Attorney General on behalf of the United States and moves the court to advance the above-entitled cause and to place it on the summary docket for hearing at the beginning of the next term.

Fremont Weeks was indicted, tried, and convicted by the District Court of the United States for the Western District of Missouri for using the mails for the transportation of lottery tickets.

At the trial certain lottery tickets, letters, and other exhibits, which had been taken from defendant's home without authority of any search warrant, were introduced and received in evidence.

The principal question involved is whether the acceptance of this evidence constituted a violation of the defendant's constitutional rights under the fourth and fifth amendments.

The Government submits that the question is concluded, and adversely to the defendant's contention, by the following cases: *Adams* v. *New York*, 192 U. S., 585; *Hale* v. *Henkel*, 201 U. S., 43; *American Tobacco Company* v. *Werckmeister*, 207 U. S., 284, 302.

Defendant is now out on bail.

Due notice of this motion has been given opposing counsel.

JAMES C. MCREYNOLDS,
Attorney General.
WINFRED T. DENISON,
Assistant Attorney General.

JUNE 9, 1913.

○

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In the

Supreme Court of the United States

October Term, 1913.

FREMONT WEEKS, *Plaintiff in Error,*

vs.

THE UNITED STATES, *Defendant in Error.*

In Error to the District Court of the United States for the Western District of Missouri.

No. 461.

STATEMENT.

[NOTE.—With permission of the Court we will refer to plaintiff in error as "defendant."]

This case is based upon an alleged violation by defendant of Section 213 of the Penal Code, forbidding the use of the mails for the transportation of papers purporting to represent chances in lotteries and gift enterprises. An indictment in nine counts, charging defendant with using the mails and express companies to transport tickets from Kansas City,

Missouri, to Parsons, Kansas, was filed in the United States District Court at Kansas City on the 24th day of April, 1912. A trial at the November, 1912, term of said court resulted in a verdict of guilty on the seventh count on the 9th day of November, 1912. A sentence providing that defendant be confined in the county jail of Johnson county, Missouri, at Warrensburg, together with payment of a fine of $100 and payment of the costs in the case, defendant to stand committed until payment, was imposed on the 16th day of November, 1912, by the court. Defendant brought the case to this Court by writ of error.

On the 21st day of December, 1911, defendant was and for some four or five years prior thereto had been in the employ of the Adams Express Company in the capacity of delivery clerk at the Union Depot in Kansas City, Missouri. His occupation occasioned contact with express messengers for the various companies and with train crews. By those men, individually, he was accustomed to sending coupons of the International Mining & Investment Company of San Domingo to investors. He lived at 1834 Penn street in said city, and on the 21st of December aforesaid a police officer, without a search warrant or other lawful authority, and during the absence of defendant and his family, went to defendant's home, found the key, and, unlocking the door, entered. The officer searched the house, and, finding some of said coupons, abstracts, insurance policies, deeds, etc., carried them to the police station. Another officer proceeded to the Union Depot, and without a warrant arrested defendant. Thereafter the officers aforesaid, accompanied by A. J. Martin, Esq.,

United States marshal at Kansas City, again went to defendant's home for the purpose, as the marshal testified, of searching for and seizing such other *evidence* as they could find. On reaching the home they entered and the marshal searched defendant's room, finding in the drawers of a chiffonier certain private papers and letters, which he carried away. Neither officer nor marshal had a search warrant. A preliminary examination before the United States Commissioner resulted in the defendant being held to await the action of the grand jury at the April, 1912, term.

Before the trial defendant presented a verified petition to the court, showing the manner of the seizure of defendant's private books, papers, insurance policies, deeds, etc., by the officers of the Government in violation of defendant's rights under the Fourth and Fifth Amendments of the United States Constitution; that same were in the possession of the United States district attorney, clerk of the United States Court, United States marshal at Kansas City; that they had refused to return same; that the district attorney intended using same at the trial, and that unless the court ordered the return of same defendant's rights under said amendments would be further violated.

The court took jurisdiction, the parties appearing by attorney, the district attorney appearing in person and for the marshal and clerk, a hearing was had, and the court, finding that the search and seizure was unlawful, ordered the return of all papers and property insofar as same were not pertinent to the trial of this case, and denied it as to private papers and property pertinent to the case, permitting the

district attorney to retain such as he thought pertinent, and reserving the right to pass upon the pertinency at the trial. After the selection of the jury and before any evidence was presented defendant again presented the petition to the court and asked for a specific ruling. The court denied the petition, and to this ruling defendant excepted, preserving his exception. At the trial the Government introduced 618 exhibits in evidence, 616 of which came into the possession of the Government as a result of the unlawful search and seizure aforesaid, Exhibits 2 to 18 inclusive having been actually seized after a search of defendant's home by the United States marshal. To the introduction of all these exhibits defendant objected on the ground that they were seized by officers of the Government after an unlawful entry into and search of defendant's home in violation of defendant's rights under the Fourth Amendment of the United States Constitution, and that by their introduction in evidence defendant would be forced to give testimony against himself in contravention of his rights under the Fifth Amendment of said Constitution. This objection was by the court overruled, to which ruling defendant excepted and saved his exception. Nothing was seized by the officers which defendant was not legally entitled to have in his possession.

Because of the violation of his constitutional rights in the manner aforesaid defendant invokes the jurisdiction of this Court.

The seventh count of the indictment charges that defendant on or about the 17th day of September, 1911, deposited in the U. S. postoffice at Kansas City, Missouri, certain papers purporting to be tickets in

a lottery, to-wit: one whole *and* one half ticket for mailing and delivery to one J. P. Todd at Parsons, Kansas. Said count is not written in the English language, as it contains twenty words without anything to indicate translation. At the close of the evidence in support of said charge defendant offered a demurrer to same which was refused, defendant excepting.

The only testimony given to support the charge on the count on which the verdict is based is that of Todd. That charge is that defendant sent one whole and one-half ticket by mail. To support the charge the Government, over objection on the ground that it had been seized by the United States marshal after an unlawful search of defendant's home to which he unlawfully gained access without a search warrant and that its introduction would be compelling the defendant to give evidence against himself, introduced Exhibit 3. Said exhibit is a letter dated September 17th, 1911, written by Todd to defendant and runs thus: "Enclosed find one dollar, for which send one whole *or* two halves and oblige." (The charge is one whole *and* one half.) Todd testified that the tickets referred to in his letter were similar to Exhibit 1. He failed to identify Exhibit No. 20 as a half ticket (55). There was no testimony showing that a half ticket similar to that set out in the indictment was sent to Todd, as the witness failed to identify any half ticket as similar, save Exhibits H (63-64), an inspection of which shows that it is not similar to that set out in the indictment. Before the Commissioner at the preliminary hearing the district attorney asked the witness: "How did you receive the

tickets, Mr. Todd? A. I could not say whether I received them through the mail or through the express company—I got an express package," and at the trial admitted so testifying (59-60). He further said:

> "I received one ticket on September 17th. I think it was a whole ticket. I don't remember —I generally send for a whole ticket. Sometimes I get quarter tickets.
>
> Q. Did you receive any quarter tickets on September 17th or December 18th? A. *I don't remember what I did receive.* I used to write for the whole ticket or whatever he had, and if he was out of whole tickets he would send me what he had. I remember seldom getting quarter tickets, but I did sometimes." (60.)

He got a package by express in December, but whether the ticket was in it or not he did not know, but he did recall getting some by express (60). He further testified:

> "I can't remember what denomination the tickets received by me in September were—whether it was a dollar, a whole or two halves—I can't remember. It was either a whole or two halves; might have been quarters, for all I know —some quarters—or might have been a half and two quarters. As I say, I wrote for all whole tickets—I preferred a whole ticket all the time; if he didn't have that, why he would send me what he had."

The foregoing is all of the testimony concerning the mailing of the tickets alleged to be sent to Todd contained in the seventh count.

There was no testimony showing whether the International Mining & Investment Company was a

lottery or gift enterprise; no testimony showing that any witness had ever been present at a drawing for prizes, if any such were had, nor was there any testimony showing whether or not the tickets alleged to be sent to Todd represented chances which were undetermined at the time of the alleged mailing.

The witnesses Hopkins B. Shane, judge of the Circuit Court at Sedalia, Missouri; W. F. Waller, a director of the Commonwealth National Bank at Kansas City; Robert H. Ducate, depot agent for the Adams Express Company, and J. E. Baxter, a real estate agent of Kansas City, disclosed that defendant, during a period of thirty years prior to the charge on which he was convicted and during which period he had lived at White City, Kansas, Sedalia, Missouri, and Kansas City, his reputation for truth and honesty was excellent. (86, 87, 89.)

A demurrer offered by defendant at the close of all the evidence was refused, defendant excepting.

SPECIFICATION OF THE ERRORS RELIED UPON AND INTENDED TO BE URGED.

(1) That the indictment aforesaid and the matter therein contained are not sufficient in law to warrant the judgment against him now given, or to convict him of the charge set forth in the seventh count of the indictment.

(2) That the indictment aforesaid and the seventh count thereof are not sufficient in law to warrant the judgment against him now given or to convict him of any crime or offense against the law of the United States.

(3) That the court refused to order the return of the property described in the following motion, which motion was duly filed herein and denied by the court at the trial of this cause, and defendant was thereby denied the rights, privileges and immunities guaranteed to him by the Fourth and Fifth Amendments to the Constitution of the United States, and particularly those guaranteed to him by that part of the said Fourth Amendment by which it is provided that, "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated," and those guaranteed to him by that part of said Fifth Amendment by which it is provided that "No person * * * shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property without due process of law; nor shall private

property be taken for public use without just compensation." Which said motion for return of property is as follows (omitting caption):

Now comes defendant and states that he is a citizen and resident of Kansas City, Missouri, and that he resides, owns and occupies a home at 1834 Penn street in said city;

That on the 21st day of December, 1911, while plaintiff was absent at his daily avocation certain officers of the Government whose names are to plaintiff unknown unlawfully, and without warrant or authority so to do, broke open the door to plaintiff's said home and seized all of his books, letters, money, papers, notes, policies, deeds, abstracts, and other muniments of title, bonds, candies, clothes and other property in said home, and this in violation of Sections 11 and 23 of the Constitution of Missouri, and of the Fourth and Fifth Amendments to the Constitution of the United States;

That the district attorney, marshal and clerk of the United States Court for the Western District of Missouri took the above described property so seized into their possession and have failed and refused to return to defendant portion of same, to-wit:

One (1) leather grip, value about $7.00; one (1) tin box, valued at $3.00; one (1) Pettis county, Missouri bond, value $500.00; three (3) mining stock certificates which defendant is unable to more particularly describe, valued at $12,000.00; and certain stock certificates in addition thereto issued by the San Domingo Mining, Loan & Investment Company; about $75.00 in currency; one (1) newspaper pub-

lished about 1790, an heirloom; and certain other property which plaintiff is now unable to describe;

That said property is being unlawfully and improperly held by said district attorney, marshal and clerk in violation of defendant's rights under the Constitution of the United States and the state of Missouri;

That said district attorney purposes to use said books, letters, papers, certificates of stock, etc., at the trial of the above entitled cause, and that by reason thereof and of the facts above set forth defendant's rights under the amendments aforesaid to the Constitution of Missouri and the United States have been and will be violated unless this court order the return prayed for;

Wherefore, defendant prays that said district attorney, marshal and clerk be notified, and that the court direct and order said district attorney, marshal and clerk to return said property to said defendant.

(Signed) MARTIN J. O'DONNELL,
Attorney for Defendant.

State of Missouri, County of Jackson—ss.

Fremont Weeks, of lawful age, being duly sworn, upon his oath states that he has read the above and foregoing motion, and that the facts therein set forth are true according to his best knowledge and belief.

(Signed) FREMONT WEEKS.

Subscribed and sworn to before me this 6th day of November, 1912.

My commission expires April 20, 1916.

EMMA POWERS,
Notary Public in and for Jackson County, Mo.

Said motion is indorsed: "Filed November 6, 1912, John B. Warner, Clerk." To the court's ruling on said motion defendant excepted.

(4) That the court, over defendant's objection and exception thereto, admitted exhibits marked 1 to 618 inclusive in evidence, same being the property, books, papers and effects described in the motion set forth in the third assignment of error herein, and more particularly Exhibits 2 to 18 inclusive, said exhibits consisting of letters unreasonably and unlawfully seized and taken from defendant's home by officers of the Government and by the marshal of the United States for the Western Division of the Western District of Missouri, who broke into said home without a search warrant or other lawful authority and unlawfully seized said letters, taking same from defendant's chiffonier; said letters being addressed to defendant and written by one J. P. Todd and J. W. Easley, from Parsons, Kansas; Owen McKinney from Brookfield, Missouri; H. M. Norton from Council Grove, Kansas, and John H. Kruse from Sedalia, Missouri; said letters containing requests or orders for whole, half and quarter tickets and referring to money enclosed and asking that defendant forward such tickets to said above named persons; said Exhibit No. 3 being in words and figures as follows:

"Parsons, Kansas, Sep. 17, '11.

Mr. Fremont Weeks,

Dear Friend: Enclosed find one dollar for which send me one whole or two halves and oblige,

J. P. Todd,

700 N. Central, Parsons, Kansas."

Said Exhibit No. 5 being in words and figures as follows:

"Parsons, Kansas, Dec. 18, '11.

Mr. Fremont Weeks, Kansas City, Missouri:

Enclosed find one dollar for one whole, I cannot understand what happened to the other one you sent last month as we received only one.

Wishing you a Merry Xmas & Happy New Year, I am your Resp.,

J. P. Todd,

700 N. Central, Parsons, Kansas."

Said Exhibit No. 20 is in form, words and figures except as to date and number similar to the tickets set out in the seventh count of the indictment; the other exhibits above mentioned and not hereinafter described being nearly all tickets similar excepting in dates and numbers to the tickets set out in the seventh count of the indictment; and to the introduction of said exhibits and all of them defendant made the following objection:

"Defendant objects to the introduction of the articles in question for the reason that it appears from the testimony of the witnesses, and also from the motion heretofore filed and passed upon by the court, that all of these papers and this property was seized by officers of the Government without a search warrant, by breaking open the home of the defendant, Mr. Weeks, and thereby violating his rights to be secure from unreasonable searches and seizures, and violating his right not to be compelled to give testimony against himself, in contravention of the provisions of the Fouth and Fifth Amendments of the Constitution of the United States and Sections 11 and 23 of Article 2 of the Constitution of the State of Missouri."

Which said objection was by the court overruled, to which ruling defendant then and there excepted and still excepts.

(6) That at the close of the evidence on the part of the United States the court overruled defendant's motion asking for the direction of the verdict and the discharge of the defendant upon the ground that the evidence adduced by the Government was not sufficient to establish the Government's case upon any of the counts of the indictment, to which ruling the defendant excepted at the time.

(7) That the court submitted the case to the jury upon counts two, six and seven of the indictment, to which ruling defendant objected and excepted at the time.

(8) That the court overruled defendant's motion praying that the Government be required to elect between counts two, six and seven of the indictment at the close of the testimony on the part of the United States, to which ruling defendant excepted.

(9) That the court denied the following request at the close of the evidence on the part of the United States:

"The defendant requests the court to charge the jury as follows: The court instructs the jury that you must find the defendant not guilty of the charges contained in count seven of the indictment."

To which ruling the defendant excepted.

(10) That the court denied the following request of defendant at the close of all the testimony:

"At the close of all the testimony defendant requests the court to charge the jury as follows: The jury are instructed that you must find the defendant

not guilty of the charge contained in count seven of the indictment."

To which ruling defendant excepted.

(13) That there is a variance between the pleading and proof in that the witness Todd, on whose testimony alone the verdict rests, testified that Exhibits "F," "G" and "H" were, excepting as to dates and numbers, exact duplicates of the tickets received by him through the mail and express from defendant. An examination of such tickets discloses that they are different from those set out in the indictment.

BRIEF OF THE ARGUMENT.

(Figures in parentheses refer to pages of Record.)

I.

This is a case involving the construction or application of the Constitution of the United States.

In the case at bar plaintiff in error invoked the protection of the Fourth and Fifth Amendments. The rights denied or claimed to be denied him were held by the District Court not to be within the protection of said amendments.

In *Motes* v. *U. S.*, 178 U. S. 458, a defendant invoked the protection of the Sixth Amendment. This claim was denied. This Court held that such denial raised a constitutional question.

Hence a constitutional question for determination by this Court has been raised by such denial.

II.

Though this Court should ultimately find that defendant's constitutional rights have not been violated, yet as the inquiry by the Court to determine that ultimate fact constitutes a taking of jurisdiction of the cause, this Court will determine all the questions raised.

The following cases support the above, to-wit: *Spreckels* v. *McClain*, 192 U. S. 397, l. c. 407; *Insurance Co.* v. *Needles*, 113 U. S. 574; *Insurance Co.* v.

Austin, 168 U. S. 695; *Cahers* v. *Virginia*, 6 Wheat. 264 (l. c. 429); *Ry. Co.* v. *Nelson*, 218 U. S. 36. The above rule more forcibly applies where the subject matter of the controversy is *per se* and inherently Federal. *Swafford* v. *Templeton*, 185 U. S. 487; *Assurance Society*, 187 U. S. 308 (l. c. 311). And this is so when the rights denied have been denied by a Federal official. *Logan* v. *U. S.*, 144 U. S. 263.

III.

The constitutional questions herein involved have never been decided by this Court adversely to defendant's contention.

In its motion to place this cause on the summary docket it is contended by the Government that the question as to whether or no the reception of the evidence seized by the marshal is error is concluded adversely to defendant's contention by the following cases: *Adams* v. *New York*, 192 U. S. 585; *Hale* v. *Henkel*, 201 U. S. 43; *American Tobacco Co.* v. *Werckmeister*, 207 U. S. 284, 302.

Examination of these cases discloses that they have no bearing on the point involved.

(a) In the Adams case the writ of error was to a state court; in the case at bar to a Federal court. In the Adams case the only Federal question presented was whether or no the Fourth and Fifth Amendments contained limitations on the power of the states; in the case at bar the question is whether or no these amendments contain limitations on the power of the United States. In the Adams case the evidence objected to was seized by a state officer

pursuant to the command of a valid search warrant and therefore reasonable; in the case at bar the evidence seized was by a United States marshal (an arm of the court itself) without any search warrant or other lawful authority. In the Adams case the evidence seized was gambling paraphernalia, the mere possession of which was, under the state law, unlawful; in the case at bar the evidence seized was that which defendant could have in his home without violating any law. In the Adams case it was competent for a state to prescribe rules of evidence to be received in the courts of its own government without reference to the United States Constitution; in the case at bar the evidence was received after the United States had procured it by violating its own constitutional limitations. In the Adams case the trial court did not stop to inquire as to the manner of the production of the evidence; in the case at bar the trial court inquired into the unlawful method of the production of the evidence, and after it had found that it had been unlawfully produced by the Government overruled defendant's prayer for its return after an issue had been made to determine that question and admitted same.

As the only Federal question in the Adams case properly before the court for determination was whether or no the Fourth and Fifth Amendments contained limitations on the power of a state with reference to its rules of evidence, everything said on other questions is *obiter*. But as the question here is whether or no the amendments in question contain limitations on the power of the United States it will be seen that the question here for determina-

tion has not only not been concluded against defendant by the Adams case, but is the direct contrary of that there decided. This Court has often recognized the distinction between the questions raised in the Adams case and that raised herein. In *Ensign* v. *Commonwealth*, 33 Sup. Ct. R. 321, we find an illustration. Thus:

> "Article 5 of Amendments to the Federal Constitution is invoked, which provides (*inter alia*) * * * 'No person * * * shall be compelled in any criminal case to be a witness against himself.' But as has often been reiterated, this amendment is not obligatory upon the governments of the several states or their judicial establishments, and regulates the procedure of Federal Courts only."

(b) In *Hale* v. *Henkel*, 201 U. S. 43, the questions were whether a witness could refuse to produce the papers of another person (not his own) in obedience to a subpoena *duces tecum* and whether the immunity statute protected a witness who gave self-criminatory testimony. This Court held that the constitutional protection against self-crimination was accorded only to *natural* persons and not to corporations, and also that the immunity statute afforded protection to the witness. So that in that case the question here presented was neither directly or necessarily involved nor was it explicitly decided.

(c) In *American Tobacco Company* v. *Werckmeister* the question was whether or no because of the seizure by a marshal under a writ of replevin of pictures in the possession of a corporation and the introduction of same in evidence over objection the corporation's rights under the Fourth and Fifth

Amendments had been violated. But this Court held under the authority of *Hale* v. *Henkel*, cursorily citing the Adams case, that, being a *corporation*, it could not invoke amendments designed for the protection of *natural* persons. So that in that case the question here presented was neither directly or necessarily involved nor was it explicitly decided.

Hence the question here for determination has never been decided adversely to defendant's contention.

IV.

The decision of the District Court denying defendant's petition to return his property and private papers after it had taken jurisdiction of the subject matter set forth in said petition and found that said private papers had come into the possession of the Government as a result of its own unlawful acts in violation of its own Constitution is reversible error.

In *Adams* v. *New York, supra*, cases are referred to which hold that a trial court will not be convicted of error for not stopping to inquire as to an illegal seizure of evidence. Here the trial court did inquire and found that the evidence had been illegally seized by the marshal. It was the duty of the trial court to take jurisdiction of the issue raised by the petition to return and decide same. It was then its duty to grant the prayer of said petition as appears by the following authorities:

In the case of *United States* v. *Don A. Mounday and L. D. W. Mounday*, No. 1456 Criminal, decided

by the District Court for the District of Kansas, facts identical with those in the case at bar were in issue as appears by the following certified copy of decision handed down on October 11, 1913. Same is set out *in toto* as it is not published in the Federal Reports.

In the District Court of the United States for the District of Kansas, First Division.

United States, Plaintiff,
vs. No. 1456. Criminal.
Don A. Mounday and L. D. W. Mounday, Defendants.

MEMORANDA OF DECISION ON MOTION OF DEFENDANT D. A. MOUNDAY TO STRIKE OUT CROSS APPLICATION OF PLAINTIFF.

The facts as pleaded are: On application of the district attorney a commissioner's warrant was issued commanding the marshal of the court to arrest defendants on the charge of using the mails of the country in carrying into execution a scheme by them devised to defraud, in violation of Section 215 of the Criminal Code. This warrant was executed by the marshal by taking defendants into custody. The arrest of defendants was made by the marshal in the office or place of business of the defendants in the city of Topeka. At the time the arrest was made two postoffice inspectors in the service, and employees of the Government, accompanied the deputy marshal, who actually made the arrest, to the office or place of business of defendants. After the making of the arrest the inspectors made search of the office of defendants for the purpose of securing, if possible,

books, papers, letters and other writings which would tend to prove defendants' guilt of the offense for which they had been arrested. This search resulted in the taking and carrying away by the inspectors from said office of defendants a large volume of letters, writings and documents, the private property of defendants, or private property of others in possession of defendants. Thereafter defendants were bound over to await the action of the grand jury. Meanwhile, pending such action, defendant D. A. Mounday presented to this court his application for a rule on the district attorney to appear and show cause, if any he had, why he should not be ordered to restore such private property of defendants so taken by the inspectors to their possession. A show cause order was issued on this application. The district attorney appeared thereto and filed his response. The issues so framed, coming on for hearing, in the interests of time, it was by the court suggested the papers, writings and documents so secured should be sealed in the presence of counsel for the respective parties and deposited with the clerk of this court for safe keeping, anyone thereafter desiring to use or obtain possession of such papers and documents should apply to the court for an order on the clerk for the same. This suggestion was adopted by counsel for the respective parties and a consent order to this effect was entered. The papers were sealed and deposited in pursuance of this order with the clerk. Thereafter, defendants deeming themselves entitled to the return of said papers as a matter of right, applied to the court for an order on the clerk to this effect. In response to this application the district attorney appeared and filed his response,

first, denying generally the matters and things charged and stated in the verified application of defendant D. A. Mounday; second, making cross application, praying the court to inquire into the matter in advance and determine if there should be found among such papers, matters material to present to the grand jury to secure an indictment against defendants, or material in the prosecution of defendants if they shall be indicted, and if such matter be found, to further inquire and determine whether such matters, letters, writings, etc., so secured from the possession of the defendants should be received in evidence on account of the manner in which they were seized by officials of the Government. To this cross application defendant D. A. Mounday has interposed a motion to strike out, based on the ground that, conceding the papers and documents to contain matters material in the presentment and prosecution of defendants, yet the same should be returned to the defendants and not by the court be permitted to be used by the Government in evidence against the defendants.

In view of the fact that the grand jury to which defendants are to be presented meets within the course of a few days from this date, on the suggestion, and at the request of the district attorney representing the Government, and the defendant, I shall proceed to determine the question presented at this time, assuming for the purposes of decision of the matters presented the manner in which the letters, papers, documents and writings were obtained is truly stated, as detailed in the verified application of defendant D. A. Mounday in

this case, and that such papers, letters, etc., are the private property of defendants.

The question thus presented is, can the plaintiff in a criminal prosecution, such as this, be permitted to use evidence so obtained for the purpose of securing the indictment and conviction of defendants, where such evidence is in the custody of the court, as in this case, and the question is presented and inquired of, as here, in advance of investigation by the grand jury, or indictment returned?

The answer to this question must be found in the effect which shall and must be given the Fourth and Fifth Amendments to the Constitution as applied to the particular facts of this case. The Fourth Article of Amendment to the Constitution provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fifth Article provides:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in times of war, or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty,

or property, without due process of law; nor shall private property be taken for public use, without just compensation."

That the action of the officials of the Government in searching the premises of defendants and seizing their private papers without warrant to so do, as charged in the verified application filed herein, was sanctioned by no law and constituted an unwarranted invasion of defendants' private rights guaranteed to them by the above quoted provisions of our National Constitution there can be and is no doubt whatever. However, the question here presented is, may the fruits of such unwarranted invasion of defendants' constitutional rights, now in the custody and under the control of this court, insofar as material, be employed by the Government to secure an indictment against, or a conviction of defendants? That is to say: Where it is conceded evidential matters material to the inquiry made have been seized, as in this case, may or should the court, on being inquired of, permit such use of such matters as is desired by the representative of the Government as is shown by his application in this case?

As has been seen from the statement made, it is alleged the search of defendants' premises and the seizure of their private property and personal effects made was done by no one authorized by law to arrest defendants, or to execute a search and seizure warrant had one been regularly applied for and granted. In other words, to support the search and seizure made there was no lawful authority or right of any kind or nature. Hence, the entire proceedings insofar as the search and seizure in this case is concerned

is sanctioned by no law, but was such an unauthorized, unlawful and void proceedings on the part of those engaged therein as beyond all question constitutes an *unreasonable search and seizure* within the prohibition and condemnation of Article IV of the Constitution above quoted.

How, therefore, can the rights of defendants "to be secure in their persons, houses, papers and effects" be asserted by and granted to them as the Constitution guarantees, in this court? Can it be done by placing in the hands of the Government officials charged by law with the prosecution of defendants as offenders against its laws, the fruits of this unlawful invasion of constitutional rights of defendants by the agents of the Government, and this in the very teeth of that provision of Article V above quoted which declares "no person * * * shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property without due process of law"?

As yet, defendants stand charged with the commission of no criminal offense in this court. Even if so charged, this court must and will presume their innocence until the contrary is proven beyond reasonable doubt. In order to secure such proof and assist the Government in overcoming the presumption of innocence which attends upon defendants and all other citizens until lawful conviction had, shall this court wink at the unlawful manner in which the Government secured the proofs now desired to be used, and condone the wrong done defendants by the ruthless invasion of their constitutional rights, and become a party to the wrongful act by permitting the use of the fruits of such act? Such is not my con-

ception of the sanctity of rights expressly guaranteed by the Constitution to a citizen.

The question here presented has, in principle, been ruled in other jurisdictions and by the Supreme Court. In some cases it has been ruled, on the ground of expediency, that is to say, on the ground those guilty of the commission of crime should not go unwhipped of punishment. That evidential matters in the custody of the court, or in the possession of prosecuting officers tending to show the guilt of defendant, may be offered in evidence against them almost regardless of the means employed for its procurement. See *United States* v. *McHie*, 196 Fed. 586; also the reasoning employed by the court in *United State* v. *Wilson*, 163 Fed. 338. However, it was thought by the framers of our Constitution, and the amendments thereto above quoted, the individual citizen is entitled to and should have protection afforded him and his rights against unlawful invasion by legally constituted authority or those assuming to act under the guise of such authority. While I neither doubt nor deny the duty of all good men, and courts as well, to uphold the lawful enforcement of the criminal laws of our country, to the end that justice may be done and the guilty not go unpunished, yet, it is my belief the constitutional safeguards deliberately framed for the purpose of protecting the rights of the individual citizen are of equal if not more concern than the conviction of anyone accused of the commission of a criminal act, no matter how guilty in fact he may be. No one, under our Constitution and laws, may be adjudged guilty until the presumption of his innocence is overcome by evidence lawfully offered and lawfully received against him in

open trial in a court of justice, as provided by and in accordance with the Constitution and laws of our country. Such is the holding of the Supreme Court, Mr. Justice Bradley writing the opinion, in the leading case of *Boyd* v. *United States*, 116 U. S. 616, which holding has never been departed from by that court insofar as I am advised. True, it has been held by the Supreme Court, in the face of powerful dissent, the constitutional guaranty above quoted may be lawfully dispensed with by an act which provides immunity from punishment for the commission of the offense which the evidence procured from a defendant tends to establish. (*Hale* v. *Henkel*, 201 U. S. 43, and other cases.) But such is not this case. Here there is no immunity which is either offered or which can be afforded defendants by way of protection against the use of the evidential matters in controversy. In this case it is the object of the government to cause defendants to be punished, if convicted, and to use such evidence now in the custody of the court to aid in securing such conviction. Surely such a flagrant violation of defendants' conceded constitutional rights should not in justice be permitted to be used to their prejudice. One wrong plus another does not make a right.

It follows, the motion of defendant to strike out the cross application of the district attorney if it shall be either proven or conceded the papers now in the custody of the clerk were secured by representatives of the government in the manner charged in the application of defendant Mounday, must be sustained, and the use of said papers against the protest of defendants be denied to the Government, either for use before the grand jury or at the trial if defendants shall

be indicted, on the ground of their illegal and unlawful manner of procurement.

It is so ordered.

JOHN C. POLLOCK,
United States District Judge.

Kansas City, Kansas, October 11th, 1913.

Endorsed: No. 1456. *In re Don A. Mounday et al.* Memo of decision on motion of defendant D. A. Mounday to strike out cross application of plaintiff. Filed October 11, 1913.

MORTON ALBAUGH,
Clerk.

United States of America, District of Kansas, ss.

I, Morton Albaugh, Clerk of the District Court of the United States of America for the District of Kansas, do hereby certify the within and foregoing to be a true, full and correct copy of Memoranda of Decision on Motion of Defendant D. A. Mounday to strike out cross application of plaintiff, *in re* Dona Mounday and L. D. W. Mounday, case No. 1456 in said court.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Topeka, in said District of Kansas, this 17th day of October, 1913.

MORTON ALBAUGH,
(Seal) *Clerk.*

See also *United States* v. *Mills*, 185 Fed. 318, and decisions of this Court in *Wise* v. *Mills*, 220 U. S. 549; *Wise* v. *Henkel*, 220 U. S. 549, and of the Circuit Court of Appeals holding that lower court had jurisdiction and that it was its duty to order

return of papers illegally seized. Also *United States* v. *McHie*, 194 Fed. 894.

Since the court had jurisdiction and was authorized to decide the question raised an erroneous decision on the point can be corrected only by writ of error. The erroneous decision resulted in a conviction. Hence it is submitted that that decision, irrespective of the ruling at the time the evidence was offered, is error and raises the constitutional question and warrants a reversal of the final judgment.

V.

The reception in evidence of the property and papers seized by officers of the Government after the court had inquired into and found that same had been so seized was reversible error.

The maxim or principle that the king can do no wrong (Blackstone Bk. 3, p. 255) has no place in American constitutional law, yet if a right was invaded by the king in England the law furnished the subject

> "with a decent and respectful mode of removing that invasion, by informing the king of the true state of the matter in dispute; and as it presumes that to *know* of the injury and to *redress* it are inseparable in the royal breast, it then issues, as of course, in the king's own name, his orders to his judges to do justice to the party aggrieved." (Blackstone Com. Bk. 3, p. 256.)

In this country there is no king to order the judges to do justice to an aggrieved party, but there is a constitution which constitutes a perpetual man-

date to the judges to do justice to the party aggrieved. And as the United States in the case at bar has invaded defendant's rights the principle that lessens litigation by avoiding circuity of action ought to cause this court not to relegate defendant to his action against the marshal, but should prevent the juristic person in whose interest he acted from deriving any benefit from his unlawful acts. As said in Note 1, Blackstone's Com. Book III, page 256,

> "The state itself, which is the sovereign people in corporate organization, can no more wrong an individual with impunity than can a private person."

The marshal's testimony (44-45) discloses that he was a trespasser in defendant's home, and that by essaying the role of burglar he got possession of defendant's private papers. Had defendant appeared on the scene he would have been justified in killing him, both in England and this country, under the common law. Says Blackstone, Bk. IV, p. 180:

> "If any person * * * attempts to break open a house in the night time and shall be killed in such attempt, the slayer shall be acquitted and discharged."

At page 223, Bk. IV, he says:

> "The law of England has so particular and tender a regard to the immunity of a man's house, that it styles it his castle, and will never suffer it to be violated with impunity; agreeing herein with the sentiments of ancient Rome, as expressed in the words of Tully: *'Quid enim sanctius, quid omni religione munibius, quam domus uniuscujusque civius?'*"

Now the question is whether or no one of the parties to the litigation in this case can take advantage of its own wrong. The question here is not whether some third party to the litigation violated defendant's constitutional rights and thereafter the government came into possession of the evidence illegally obtained without other affirmative unlawful act on its part. But the question is, can the United States, acting through its marshal, violate the charter of its own existence—the charter it requires all men to obey—and then take advantage of its own act? This unlawful act on the part of its marshal was ratified by the United States acting through its district attorney, who received the private papers in question from the marshal with knowledge of their unlawful seizure; kept them in his possession against defendant's consent and opposed (18-21) defendant's application to the court that they be returned to defendant. The unlawful acts of the United States acting through its marshal and district attorney were ratified by the said United States acting through its District Court, which, notwithstanding he had been fully advised of the manner in which the officers of said court had violated defendant's constitutional rights, and notwithstanding the court had been petitioned to order the return of said private papers and found on hearing that they had been unlawfully seized, refused to order their return (18-19-35-38), and over the defendant's objection that his constitutional rights had been and were being violated, admitted them in evidence, the question here presented resolves itself into the question, will this court, by denying defendant's prayer for reversal,

ratify all these unlawful acts and violate the principle expressed in the age-long maxim:

> *"Nullus commodum capere potest de injuria sua propria?"* (Co. Litt. 148b.)

The United States is a juristic person and as such is bound by all the rules applicable to any other in any litigation to which it is a party. As such it has laid down certain rules, lines and limitations which no man, either on its behalf or his own, shall pass. It needs no authority to support the statement that it is bound and limited by its own constitution. The maxim above cited applies to it.

> "It is a maxim of law recognized and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognized in courts of law and equity, and, *indeed, admits of illustration from every branch of legal procedure.*"
>
> Broom's Legal Maxims, 227 (7th Ed.)

This court based its decision in *Boyd* v. *U. S.*, 116 U. S. 616, on a kindred principle, though the opinion does not contain expressions indicating same. We submit that in both instances the same wrongful violation of constitutional rights was effected through analogous means.

In the Boyd case the United States, acting through its duly accredited agents, to-wit, the national Legislature, passed an act unauthorized by the constitution. This act provided that the district attorney in revenue cases might file a motion containing allegations relative to proof contained in private papers in the possession of defendant or claimant, and that

thereupon, on notice to produce same, the allegations set forth in the motion should be taken as confessed if claimant failed to produce them. The district attorney, pursuant to the terms of said unauthorized act, filed a motion in the District Court and the United States, acting through its District Court, ordered the production of an invoice in the possession of claimant. Claimant, in obedience to the notice, but objecting to its validity and the constitutionality of the law, produced the invoice, and when it was offered in evidence the District Court, as here, notwithstanding the same objection was urged to its admission, admitted it in evidence. That is to say, a private paper in the possession of defendant was produced in the Federal Court by the officers of the court by *unlawful means.* In other words, in the Boyd case the agents of the United States, to-wit, its Legislature, its court, its district attorney and its marshal, *using means forbidden by the constitution,* obtained the production in court of claimant's private papers. In the Weeks case the agents of the United States, to-wit, its marshal and district attorney, with the knowledge and approbation of its district court, *using means forbidden by the constitution,* obtained the production in court of Weeks' private papers.

In the Boyd case, after the private papers containing evidence had been by unlawful means brought into court, an objection to the introduction was made on the ground that the methods *used in the production of the evidence to be used against the claimants was unconstitutional.* This objection was overruled and the evidence admitted.

In the case at bar, after the private papers containing evidence had been by unlawful means brought

into court, an objection to its introduction was made on the ground that the methods used in the production of the evidence to be used against defendant were unconstitutional. This objection was overruled and the evidence admitted. Its admission in the Boyd case was held error. To hold that its admission in the case at bar is not error would necessitate the overruling of the Boyd case, and we submit that it would also necessitate the nullification of the constitution. But while this court may hold a statute null we know of no instance in which it has held the constitution void.

In the Boyd case the court said:

> "A compulsory production of a man's private papers to establish a criminal charge against him or to forfeit his property, is within the scope of the Fourth Amendment to the Constitution, in all cases in which a search and seizure would be, because it is a material ingredient, and affects the sole object and purpose of search and seizure" (l. c., p. 622).

In the case at bar the fact that in the words of the marshal he went to defendant's home, invaded it without a search warrant, rummaged his drawers and seized—not stolen goods or anything which defendant had no legal right to have in his possession—but his private papers and correspondence, in other words, *evidence*, discloses the most flagrant instance of the violation of a citizen's rights to be secure from unreasonable searches and seizures imaginable. In the Boyd case it was necessary to give a liberal interpretation to the Fourth Amendment to include the violation complained of in the said amendment because,

according to the strict letter of the law, there was no actual search and seizure.

But here is an instance where the constitution has been violated both in letter and spirit. In *Underwood* v. *State*, 78 S. E. 1103, the question as to whether or no the state could obtain a conviction of one of its citizens by means similar to those used herein is lucidly discussed by the Georgia court. There policemen, without a warrant, forcibly opened defendant's safe and finding evidence, though of a kind forbidden by law to be in defendant's possession, carried it away, and same was introduced over defendant's objection that it was not admissible on the ground that it was obtained in violation of the provisions of the constitution of the state, that "no person shall be compelled to give testimony tending in any manner to criminate himself." Said the court:

> "This constitutional provision and the other of kindred import, that 'the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated' (article 1, section 1, paragraph 16), had all the dignity of maxims in the earliest days of English history, and were brought, with other fundamental principles of the common law system of England, by our ancestors to America as a part of their birthright. In other words, these constitutional restrictions are but the expression of the unwritten common law rights which had come to be recognized in England in revolt against the thumb-screw and rack of early days. *Marshall* v. *Riley*, 7 Ga. 367; *Thornton* v. *State*, 117 Wis. 338, 93 N. W. 1107, 98 Am. St. Rep. 924. As to the application of these fundamental principles the decisions of the courts are in great conflict and in some confusion. Two distinct lines of interpretation have been announced by the courts of this country.

One is a liberal construction of these constitutional guarantees in favor of the rights of the citizen, and the other is a literal and restricted construction, confining the application of the principle within very narrow limits. The latter construction may be stated generally as follows: 'Though papers and other subjects of evidence may have been illegally taken from the possession of the party against whom they were offered, or otherwise unlawfully obtained, this is no valid objection to their admissibility, if they are pertinent to the issue. The court will not take notice how they were obtained, whether lawfully or unlawfully; nor will it form issues to determine that question.' 1 Greenleaf on Evidence, Sec. 245a. In equivalent phraseology this rule has been enunciated by the majority of the courts of final resort. It was said by the Supreme Court of Illinois, in the case of *Gindrat* v. *People*, 138 Ill. 103, 27 N. E. 1085, that courts in the administration of the criminal law are not accustomed to be oversensitive in regard to the sources from which evidence comes, and will avail themselves of all evidence that is competent and pertinent, regardless of how it was obtained. Adopting this technical construction, it is held by these courts that the provision relating to self-crimination must be strictly testimonial, in other words, that it is applicable to the accused only as a witness, and must be directed to a positive, overt act on the part of the accused personally, and does not include acts of other persons. One learned authority expresses this view of the rule as follows: 'It seems to us an unfounded idea that the discoveries made by the officers and their assistants, in the execution of process, whether legal or illegal, or where they intrude upon a man's privacy without any legal warrant, are of the nature of admissions made under duress, or that it is evidence furnished by the party himself upon compulsion. The information thus acquired is not the admission of the party, nor evidence given by him, in any sense. The party has in

his power certain mute witnesses, as they may be called, which he endeavors to keep out of sight, so that they may not disclose the facts he is desirous to conceal. By force or fraud access is gained to them, and they are examined to see what evidence they bear. That evidence is theirs, not their owners.' *State* v. *Flynn*, 36 N. H. 64. Mr. Wigmore, in his treatise on evidence, takes this view of these constitutional restrictions, citing many decisions in support of his contention, and combating the soundness of the decision of the Supreme Court of the United States announcing a contrary opinion, in the case of *Boyd* v. *United States*, 116 U. S. 616, 6 Sup. Ct. 524, 29 L. Ed. 746; 4 Wigmore on Evidence, §§ 2251-2270.

Liberal construction in favor of the rights of the citizen has been adopted by this court.

* * * * * * *

"Where the arrest is legal, evidence obtained by a search and seizure is admissible; where the arrest is illegal, evidence thus obtained is inadmissible."

* * * * * * *

"Here the accused was arrested without a warrant on suspicion. His premises were searched without a warrant on suspicion. * * * In endeavoring to find evidence sufficient to establish the crime which they suspected he was guilty of, these officers of the law committed much graver offenses than the one of which they suspected the accused. He was suspected of keeping intoxicating liquors on hand at his place of business, an offense *malum prohibitum*. They illegally deprived him of his liberty, they searched his premises illegally, they made an assault and battery upon his person, and in so doing they violently pulled down the constitutional bulwarks which protected him as a citizen, both as to his person and as to his property. The language of Chief Justice Bleckley, in *Rusher* v. *State*, 94 Ga. 366, 21 S. E. 594, 47 Am. St. Rep. 175, is here

pertinent: 'The law ought to hold out no encouragement to violent and lawless men to commit crime for the sake of detecting a previous crime and bringing the offender to punishment. The law should never suffer itself to become an enemy or antagonist to its own reign.' Here, under the facts, was a multiplication of crimes committed by the officers of the law, crimes against the inherent rights of the citizen, secured by the constitution of this state, in order that a comparatively venial offense, made so by statutes but not inherently an offense, could be detected. If such means could be adopted in the detection of crime and were approved by the courts, the law would not only be antagonistic to its own reign, but a state of anarchy would exist."

* * * * * * *

The two provisions of the constitution which we have been discussing appear in the fundamental law of every state of this Union, as well as in the federal constitution. They are the sacred civil jewels which have come down to us from an English ancestry, forced from the unwilling hand of tyranny by the apostles of personal liberty and personal security. They are hallowed by the blood of a thousand struggles, and were stored away for safe-keeping in the casket of the constitution. It is infidelity to forget them; it is sacrilege to disregard them; it is despotic to trample upon them. They are given as a sacred trust into the keeping of the courts, who should with sleepless vigilance guard these priceless gifts of a free government. We hear and read much of the lawlessness of the people. One of the most dangerous manifestations of this evil is the lawlessness of the ministers of the law. This court knows and fully appreciates the delicate and difficult task of those who are charged with the duty of detecting crime and apprehending criminals, and it will uphold them in the most vigilant, legal discharge of their duties; but it utterly repudiates the doctrine that these important du-

ties cannot be successfully performed without the use of illegal and despotic measures. It is not true that in the effort to detect crime and to punish the criminal 'the end justifies the means.' This is especially not true when the means adopted are violative of the very essence of constitutional free government. Neither the liberty of the citizen nor the sanctity of his home should be invaded without legal warrant. Suspicion is no substitute for a legal warrant, and the badge of authority is the emblem of law and order, and gives no right to the wearer to arrest without warrant, imprison without authority, and torture without mercy. Any compulsory discovery of self-incriminating evidence is abhorrent to a proper sense of justice and is intolerable to American manhood. What is commonly known as the methods of the 'third degree,' so frequently used by zealous officials or interested detectives, may be an appropriate part of that jurisprudence which holds that every man is guilty when accused of crime until he proves his innocence; but it has no place in the jurisprudence of a land where the cardinal principle of humanity and justice is that every man is presumed to be innocent until his guilt is shown by legal evidence beyond a reasonable doubt. These arbitrary methods of discovering crime are subversive of the fundamental principles of law, destructive of the indefeasible rights of personal liberty, personal security, and private property, and place at the mercy of every petty official and conscienceless criminal the life, liberty and reputation of the citizen. They flourished in the dark days of the Star Chamber and the Spanish Inquisition, but could not exist in the clear atmosphere of political liberty and personal freedom. Besides, these instruments of oppression are successful only when used against the ignorant or the wicked. The former cannot combat the artifice and tricks of the experienced official, and the latter will not hesitate to involve the innocent to himself escape detection. Therefore

courts of justice will not approve such methods to discover crime, and the law, seeking pure and impartial sources of evidence, will refuse to admit compulsory confessions of guilt, and condemns as dangerous, untrustworthy, and without probative value testimony against others obtained by the use of physical torture or mental coercion.

In the instant case the only evidence of guilt having been discovered in the forcible violation of the constitutional provision that no man shall be compelled to give testimony that in any manner tends to criminate himself, the conviction was unlawful.

Judgment reversed."

This Court in *Counselman* v. *Hitchcock*, 142 U. S. 547, has held that the provision of the Georgia Constitution mentioned in *State* v. *Underwood*, *supra*, should receive a similar construction of the analogous language in the Federal Constitution notwithstanding the verbal differences. Hence, *the admission of this evidence was reversible error.*

Wharton on Criminal Evidence, Sec. 516f, page 1076, 10th Ed., Vol. II, says:

"State courts, in some instances in express terms, have stated their indifference to the methods used to obtain demonstrative evidence, and refuse to include it on the ground that it was illegally obtained. *A different rule prevails in the United States courts*, where the 4th Amendment, declaring that persons, houses, papers and effects shall be secure against unreasonable search and seizure; and that the 5th Amendment to the Constitution, declaring that no one shall be compelled, in any criminal case, to be a witness against himself, constitute valid grounds for the exclusion of such evidence, when obtained contrary to the provisions of such amendments. Both amendments relate to the

> personal security of the citizen. They nearly run into and mutually throw light upon each other. When the thing forbidden in the 5th Amendment, namely, compelling a man to be a witness against himself, is the object of a search and seizure of his private papers, it is an 'unreasonable search and seizure' within the 4th Amendment."

To the same effect is the opinion in *United States* v. *Wong Quong*, 94 Fed. 832, *en parte Jackson*, 96 U. S. 727, and many cases cited by Wharton.

Commenting on the somewhat callous remark of the court in *Gindrat* v. *People*, 138 Ill. 103, where it said, "Courts, in the administration of the criminal law, are not accustomed to be over-sensitive in regard to the sources from which evidence comes," and on that made in *Shields* v. *State*, 104 Ala. 35, where it was said: "However unfair or illegal may be the methods by which evidence may be obtained in a criminal case, if relevant, it is admissible," he says:

> "Notwithstanding some qualifications attached to these statements, they are not conducive to upholding the dignified and solemn procedure that should always characterize courts when passing upon questions of forfeiture of property, or life or liberty of an accused. But such statements are a warrant to officers to exceed their authority, and, instead of being protective to become oppressive. The value of all testimony is that it is free and voluntary, and the natural unconstrained recital of facts. Demonstrative proof, the most persuasive of all, should be admitted only when it becomes an aid to the court and not a means of oppression.
>
> Under such view of the law as is indulged in by the courts the Illinois and Alabama cases,

> a man may be theoretically protected by the presumption of innocence guarding him throughout the trial, but in practice, he is forced to prove himself innocent. The unconscionable sweating of prisoners in city jails, and the oppressiveness of the executive machinery, arise out of the expressions set forth, and any limitations are utterly disregarded."

That language should have some force in determining the issue herein.

VI.

The common law rules of evidence embodied in the Constitution have, by being so embodied, been clothed with the dignity of a fundamental law and the application of same under the Constitution is not limited by the rules of the common law.

The illiberal and strict construction given by some state courts to those parts of their constitutions embodying the Bill of Rights is responsible for the error of the District Court in the case at bar. A leading case favoring a strict construction is that of *People* v. *Kelly*, 24 N. Y. 74. This Court, however, in the case of *Counselman* v. *Hitchcock*, 142 U. S. 547, reviewed cases interpreting the constitutions of various states, including the provision of the Georgia Constitution in judgment in *State* v. *Underwood*, *supra*, and then said:

> "As the manifest purpose of the constitutional provisions, both of the states and the United States, is to prohibit the compelling of testimony of a self-criminating kind from a party or a witness, the *liberal* construction which must be placed upon constitutional provisions for the

protection of personal rights would seem to require that the constitutional guarantees should have as far as possible the same interpretation."

The court then disapproved of the strict rule of construction adopted in *People* v. *Kelly, supra,* and further approved the rule announced in *Boyd* v. *U. S.,* 116 U. S. 616, where it was held:

> "That the only way in which illegitimate and unconstitutional practices can be obviated is by adhering to the rule that constitutional provisions for the security of person and property should be *liberally* construed."

To hold that that which a court cannot in the first instance order to be done because the Constitution prohibits, it can afterwards approve because it did not itself order it done is to adopt a *dishonest* rule of construction. It cannot be said to be either strict or liberal but it is absolutely dishonest and a fraud on the intent of the founders. Such a method of construction can find no support in any rational system of law. We find that the civilians have clearly recognized the distinction between such a construction and that resulting from honest interpretation. Says Sohm in his Institutes of Roman Law, 2nd Ed., page 30:

> "Juristic interpretation is either 'grammatical' or 'logical.' If it is an interpretation of the words as they stand, it is called 'grammatical,' if it is an interpretation of the sense by reference to the context as well as the origin and object of the rule it is called 'logical.'
>
> In the logical interpretation of a rule of law the element which has to be considered above all others is the *object* of the rule, that is, the practical effect intended by the lawgiver. * * *

> It is the foremost function of the 'logical' interpretation to show clearly the real contents of a rule of law by means of a true perception of its actual conditions and effects; in other words, a logical interpretation should be above all things practical; it should exhibit the *material* significance of the rule, subjecting it to a keen and searching test in its bearings on things 'divine and human.'
>
> * * * * * * * *
>
> To take advantage of the letter of the law —of its grammatical interpretation—in defiance of its sense—that is, its logical interpretation—would constitute a proceeding in *fraudem legis*."

The application of the principles embodied in the 4th and 5th Amendments should not be restricted to instances to which, according to the rules of evidence at common law, they would be limited. Wigmore and some other late text writers have advocated their restriction to such instances in accordance with the history of the rules of evidence in England. But those authors have overlooked the fact that it would be impossible on the part of the courts to do so and at the same time obey the Constitution. A similar contention was made in Emery's case, 107 Mass. 172 (cited with approval in *Counselman* v. *Hitchcock*), where it was sought to compel testimony before the Legislature. The specific contention was that the Parliament of England always disregarded the rule in investigations before that body; and that the rule of legislative investigation remains unaffected by the constitutional article. Said the court:

> "But the rule of the common law did not control parliamentary inquiries, for the simple and obvious reason that the authority of Parliament was more patent than the common law,

and might change, annul or suspend its restrictions as that body should determine."

For analogous reasons and the rules of constitutional interpretation, the courts are not restricted in the application of a rule of evidence which has risen to the dignity in this country, by reason of its adoption in the Constitution to that of a fundamental law, to the limits bounding such rule at common law.

In determining the application of the 4th and 5th Amendments to instances, this Court has held that the rule of evidence relating to the exclusion of non-voluntary statements in the nature of confessions, the rule that no one shall be compelled to give evidence against himself in a criminal case, and the rule that no one shall be subjected to an unreasonable search and seizure for the purpose of using the fruits of the seizure as evidence, rest on kindred bases irrespective of their sources in ages past and that they are embodied in the 4th and 5th Amendments. *Bram* v. *U. S.*, 168 U. S. 532, l. c. 542; *Brown* v. *Walker*, 161 U. S. 596-7; *Boyd* v. *U. S.*, 116 U. S. 616. In other words the court, in the application of the rules of evidence wherever same are imbedded in the Constitution, gathers the intent of the framers "from the Constitution itself" (Black's Interpretation of Laws, page 15), and it has merely applied the rule that:

> "Whatever is necessary to render effective any provision of a Constitution, whether the same be a *prohibition or a restriction*, or the grant of a power, must be deemed implied and intended in the provision itself."
>
> Black Interp. of Laws, page 22.

That is to say when the Constitution makers, by the 4th Amendment prohibited unreasonable searches and seizures by the government they prohibited whatever was necessary to make the prohibition effective; they restricted the right to do, by indirection, that which could not be done directly. If the arm of the court does, in violation of the Constitution, what the court could not itself do, that is, if the court by indirection does what it could not do directly, it follows that if the decision in the one instance be invalid so is it in the other.

Of what avail is the provision that "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated," if the individual whose official oath bound him to not to violate but to protect that right can, under cover of his office and with the approval and endorsements of the great law officers of the land and the judges of the nation, with impunity essay the role of the shepherd whose duties require him to protect the flock, but who degenerates into a wolf? But this Court in the Boyd case announced the rule that the 4th Amendment by implication, if not directly, prohibited the government from unlawfully searching for and seizing private papers to be used in evidence against the owner, thus:

> "Breaking into a man's house and opening boxes and drawers, are circumstances of aggravation, but *any* forcible and compulsory extortion of a man's own testimony or of his private papers to be used as evidence to convict him of crime or forfeit his goods, is within the condemnation of that judgment. *(Enbeck* v. *Carrington*, 19 How. St., Tr. 1029.) In this regard the 4th and 5th Amendments run almost into each other.
>
> * * * * * * * *

> **The unreasonable searches and seizures condemned in the 4th Amendment are almost always made for the purpose of compelling a man to give evidence against himself, which in criminal cases is condemned in the 5th Amendment, and compelling a man in a criminal case to be a witness against himself, which is condemned in the 5th Amendment, throws light on the question as to what is an unreasonable search and seizure in the 4th Amendment. *And we have been unable to perceive that the seizure of a man's private books and papers to be used in evidence against him is substantially different from compelling him to be a witness against himself. We think it is within the clear intent and meaning of those terms.***
>
> * * * * * * *
>
> **We are further of opinion that a compulsory production of the books and papers of the owner of goods sought to be forfeited in such a suit is compelling him to be a witness against himself, within the meaning of the 5th Amendment to the Constitution, and it is the equivalent of a search and seizure and an unreasonable search and seizure, within the meaning of the 4th Amendment."**

From which it is apparent that the 4th Amendment, by implication in the case at bar, prohibited the use of the evidence procured by an unlawful search and seizure, even though the 5th Amendment did not exist. Otherwise, the canon of construction that whatever is necessary to render effective a restriction of a constitutional provision is implied must be ignored.

The constitutional prohibition does not mention either court or officer. Instead it prohibits every Governmental agent and agency from violating the rights it insures. If this Court can hold such evi-

dence incompetent when compelled by improper process of the court, we fail to see why the reasons for its exclusion are not increased manifold in instances where the *arm* of the court compels it without even a semblance of proceeding as the law requires.

The constitutional inhibition is not directed to the courts. It is directed to all men. If a private citizen invades a home it is the duty of every agent of the Government to rush to its defense; *a fortiori*, it is the duty of the U. S. Marshal not to violate the provisions. The reasoning, such as that used in *Gindrat* v. *Illinois*, 138 Ill. 103, to the effect that because the court itself did not participate in the violation of the constitutional rights of the defendant he could not invoke those provisions (though the state could take advantage thereof), which protected him from unreasonable searches and seizures and from being forced to give testimony against himself, is fallacious and illogical.

In this connection it may be not inappropriate to call attention to the fact that there is no difference between legal and logical reasoning. Thayer, in discussing this very question of evidence, emphasizes the fact that in determining what rules exclude evidence, logical reasoning must control. Thus:

> "What is our Law of Evidence? It is a set of rules and principles affecting judicial investigations into questions of fact; for the most part, controverted questions. It is concerned with the operations of courts of justice, and not with ordinary inquiries *in pais:* and even within this limited range, it does not undertake to regulate the processes of reasoning or argument, *except as helping to discriminate and select the*

material of fact upon which these are to operate. * * * They are the same which take place in questions of law upon a demurrer—those of mere reasoning. * * * Let it be distinctly set down then, that the whole process of legal argumentation, and the rules for it, essential as these are, and forever pressing on the attention, are mainly an affair of logic and general experience, not of legal precept. I say mainly because the reasoning process, in its application to particular subjects, gets always a tincture from the subject-matter. * * * In dealing with litigation, courts are not engaged in an academic exercise. With them the search for truth is not the main matter; their desire to know this, and their ability to use it, are limited by their main business, namely, *that of awarding justice, i. e., awarding it as far as they may, under the rules of law, and according to established usages and forms.* * * * We have no treatises and no chapters of treatises that deal separately and specifically with the topic of legal reasoning in the ascertainment of facts. * * * Why is any such exposition needed? Certainly not, as I have said, because legal reasoning differs in any fundamental respect from any other reasoning, or because lawyers have any peculiar organs or methods for tracking and apprehending the truth. What is called the 'legal mind' is still the human mind, and it must reason according to the laws of its Constitution. There is a good deal in our ordinary legal phraseology that might seem to discredit this, as when we read of rules that require inferences which the principles of sound reasoning neither require nor allow; and of the duty to weigh a rule of presumption in one scale and evidence in another. But these are merely phrases; the real thing meant, so far as a clear meaning can be imputed to them, is not what is said."

After discussing some considerations that must be taken into account, he says:

> "Amidst them all, the great characteristics of the art of reasoning and the laws of thought still remain constant. As regards the main methods in hand, they are still those untechnical ways of all sound reasoning, of the logical process in its normal and ordinary manifestations; and the rules that govern it here are the rules that govern it everywhere—the ordinary rules of human thought and human experience, to be sought in ordinary sources, and not in law books. And so a knowledge of these processes is presupposed in all judges and lawyers."
> Thayer on Evidence, 263, 276.

If, then, the legal mind, that is, the mind of the court in this instance, is a human mind, and if it must reason according to the laws of its Constitution, and if the constitutional restrictions are binding on the United States and all its officers, agencies and tribunals, we ask if it be not a perverted system of reasoning that would produce the conclusion that it would not be error if the court's arm with the court's knowledge and approval did what the court itself cannot do without being guilty of error? The District Court in the case at bar before the evidence unlawfully seized was introduced, actually inquired into its method of seizure and ordered part of defendant's private papers returned, on the ground that they had been unlawfully seized, but permitted the officer of his court to retain what portion of same he desired, for the unlawful purpose of using them as evidence. So that though the record shows that he found that they were unlawfully seized and found that his duty required him to order the return of portion of same yet overruled the motion to

return as to others. This in itself was a judicial act on the part of the court in violation of defendant's constitutional rights equivalent to the issuance of process authorizing the Marshal and District Attorney to go to defendant's home for the very purpose of searching and seizing and producing his private papers in court, to be used in evidence against him and was just as indefensible. If the same result followed in one as the other from the action of the court, then we have an instance for the application of the axiom, that "Things which are equal to the same are equal to each other." And if logical reasoning be permitted to a court it must declare that by the court's action in one instance the defendant's constitutional rights were violated as effectually as in the other. The distinction sought to be drawn is logically indefensible and the drawing thereof inimical to the spirit of the Constitution, if not to the letter thereof. No such hair-splitting distinction was allowed in the Boyd case, where it was contended, and the court conceded, that the proceedings was neither:

> "Within the liberal terms of the 5th Amendment to the Constitution any more than it is within the liberal terms of the 4th. Does this relieve the proceedings or the law from being obnoxious to the prohibitions of either? We think not; we think they are within the *spirit of both?*"

The proceeding in the case at bar is not one where the trial court had not inquired into the method of the production of the evidence, and therefore not one where an appellate court can rule that it will not convict the lower court of error for failure

to inquire into the method of production. It is one where the trial court inquired and found that the evidence had been unlawfully produced in court by its own officer. Can this Court approve the resulting convictions by holding that defendant is relegated to an action against the Marshal or the District Attorney? We submit that no such strict or illiberal construction should be given to the constitutional provisions involved, and that the warning in the Boyd case should control its action. In this is an instance where an illegitimate and unconstitutional proceeding has resulted in branding defendant as a felon. It may be that, believing defendant guilty, the court would be disposed to close its eyes to that illegitimate and unconstitutional method. But we submit that the principles that must control

> "reach farther than the concrete form of the case before the Court, with its adventitious circumstances; they apply to all invasions on the part of the Government and its employes of the sanctity of a man's home and the privacies of life."
>
> Boyd's case, l. c. 630.

To ignore those principle cases such as that at bar is to convert every Governmental employe into a petty tyrant and despot. Such

> "illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and liberal construction deprives them of half their efficacy, and leads to gradual depreciation of the right,

> as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen and against any stealthy encroachments thereon."

It will be noted that in *Adams* v. *New York*, 192, and cases cited, that the search was for stolen goods or articles or devices which the law prohibited the complaining party from having in his possession, and this was the groundwork of that decision. But in the case at bar no law prohibited the defendant from having the *private papers or any article seized* and introduced in evidence in his possession. They were *his property*. This distinction was recognized in the Boyd case (623), where it is said:

> "The search for and seizure of stolen or forfeited goods, or goods liable to duties and concealed to avoid payment thereof, are totally different things from a search for and seizure of a man's private books and papers for the purpose of obtaining information therein contained, or of using them as evidence against him. The two things differ *toto ceolo*. In the one case, the Government is entitled to the possession of the property, in the other it is not."

The constitution makers enacted the law on this point. It is submitted that decisions inimical to its spirit by many courts approving the admission of evidence so procured constitute usurpations of functions which the constitution creating them did not give. The decisions contrary to plaintiff's contention are in effect species of legislation resulting from arbitrary discretion on the part of the courts rendering them, and hence not within their power. The power of a court to make law and to manufacture

justice of a brand to suit its ideas would not be above the just claim of a final judicature if it were not a condition precedent to the exercise of such power and the rendition of such justice that the leading principle on which it must be based would be its own discretion. We respectfully call attention to the history of the world and to the lessons which, in this respect, must be deduced therefrom to the effect that whenever the life, liberty or property of any human being was dependant for its preservation on the discretion of any man or tribunal the direct consequence was that the first franchise and first right of that human being and, incidentally, all those which thereon vitally depend, is to be vitiated for some cause of which no man knows and is to be proved by no known rule whatsoever of legal evidence. This is so anomalous, not alone to our whole constitution, but to the civilization which has been evolved by the English speaking race that we venture to say that the most trivial right which the citizen claims never was or can be vitiated in such manner. That a court could properly decide by such rule could be supported only by the following method of reasoning: A court of last resort does not make laws. No, such power is not contended for; it only declares law and, as it is a tribunal both competent and supreme, what it declares to be law becomes law, though it was never law before. Then the circumstance that there is no appeal from its decision is made to imply that it is unnecessary to follow any rule or constitutional mandate in its exercise. The judgment does not derive its validity from conformity to the law, but preposterously the law is made to attend on the judgment, and the rule of the judgment is no other than the arbitrary and

occasional will of the individual constituting the court. An arbitrary discretion leads, legality follows, which is just the very nature of a legislative and, hence, an illegal act.

The idea dominating the character of discretion herein referred to is that which in remote and barbarous ages resulted in the denial of human rights and the annihilation of human freedom. It is the species anathematized in the quaint and pointed phrase of Coke when he denounced the determination of legal questions by "the crooked cord of the discretion of the judges," and not in accordance with the "golden 'metawand' of the law." The decisions mentioned have resulted from the exercise of that discretion referred to by Camden in the Court of Common Pleas in the trial of Hindson and Kersey when he said:

> "The discretion of a judge is the law of tyrants. It is always unknown. It is casual and depends upon constitution, temper and passion. In the best it is oftentimes caprice. In the worst it is every vice, folly and passion to which human nature is liable."

From all of which it follows that the admission of the evidence in question was a violation of defendant's constitutional rights and hence reversible error.

VII.

The indictment does not conform to the requirements of the Sixth Amendment in that being partly in an unknown language it does not advise defendant of the crime wherewith he is charged.

The indictment is fatally defective in that it fails to inform defendant of the nature and cause of the accusation against him. (12, 13, 14, 15, 16.) In the words of the court in *Fitzpatrick* v. *U. S.*, 178 U. S. 304, the indictment must contain "a statement of the acts constituting the offense in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what was intended." At the time of the adoption of the constitution the language of the People was that which we now speak, to-wit, the English language. Though at common law the Latin language was used, same was modified by 36 Edw. 3 Stat., l. c. 15, authorizing the use of English. The courts of this country have always required that indictments shall be, *in toto*, in English. The indictment herein is partly in a language which is unintelligible to a person of common understanding. In the body of same we find the words "*circo*," "*cero*," "*dos*," "*nueve*," "*cero*," "*seis*," "*cero*," "*dos*," "*siebe*," "*cero*." How can defendant know what charge may be couched in those unknown words? A case directly in point showing this fatal defect in the indictment is that of *People* v. *Ah Sun*, 92 Cal. 648. There the indictment was written in English, charging that defendant was guilty of perjury in that he testified before a duly constituted court that he did not at any time sell a paper or lottery ticket

to one John Ferron. In the body of the indictment a space about two inches square was occupied by Chinese characters without a translation. Said the court:

> "To one not versed in any language other than the English language, the certain document, instrument, paper and lottery ticket alleged to be in words and figures set out in the complaint would be wholly unintelligible. An indictment or information must contain a statement of the acts constituting the offense in ordinary and concise language, and in such manner as to enable a person of common understanding to know what is intended. An information partly in English and partly in Chinese cannot be said to be in ordinary language."

The attorney general contended that the information was "defective in matter of form only" and not in "matter of substance." Said the court in answer:

> "Who can determine that question without first knowing all that it contains? Whether the unknown matter is a matter of substance, or of form only, cannot be determined until it ceases to be unknown."

The court further said that a translation of the language might have shown that the writing was not a lottery ticket. Proceeding:

> "And so long as we do not know what it was, we have no right to assume that the selling of it constituted a misdemeanor."

In the case at bar the indictment alleges that defendant deposited certain tickets *purporting* to rep-

resent chances dependent upon the event of a lottery, dependent on lot and chance. A translation might show that it did not so purport. How can this court know its purport or how could defendant know its purport if he did not know its language? So long as this court does not know what it is it has no right to assume that the mailing of it constituted a crime.

These words render the charge both unintelligible and uncertain and is within the principle condemned in the following cases:

State v. *Bankhead*, 25 Mo. 558.
State v. *Jericho*, 40 Vt. 121.
Whitney v. *State*, 10 Ind. 404.

VIII.

The indictment does not charge defendant with the violation of any law.

Count number 7 of the indictment attempts to charge a crime under subdivision two of section 213 of the Act of March 4, 1909. That subdivision is as follows:

> "And no lottery ticket or part thereof, or paper, certificate, or instrument purporting to be or to represent a ticket, chance, share or interest in or dependent upon the event of a lottery gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance * * * shall be deposited in the mails."

The count in question, amongst other things, alleges that defendant on the 17th of September, 1911, did

> "deposit and caused to be deposited in the United States postoffice at Kansas City, Missouri, for mailing and delivery to one J. P. Todd at Par-

> sons, Kansas, *certain papers, certificates and instruments* purporting to be and to represent tickets, chances, shares and interests in and dependent upon the event of a lottery and gift enterprise dependent in whole or in part upon lot and chance."

It will be noted that the indictment does not charge the sending of anything *concerning* a lottery, etc., nor does it charge the sending of a lottery ticket or part thereof, but it charges the sending of papers, etc., *purporting* to be or to represent a ticket, chance, etc., dependent upon the event of a lottery, etc., dependent in whole or in part upon lot or chance. Then, altogether omitting any of the *indicia*, to-wit: the date and numbers by which the papers sent could be identified, it essays to set out the ticket in words and figures. An inspection of the tickets (13, 14, 15) set out discloses that there is nothing on same to indicate that the premiums are dependent on lot or chance. Indeed, the purport is directly to the contrary, for on the face of the instrument set out we find that the purport and representation of the instrument is that it "entitles the holder to such premium *granted* its number."

The use of the word "granted" shows that the paper set out in the indictment, instead of *purporting* to be or represent a ticket dependent upon lot and chance, purports on its face to be and to represent a ticket the payment of the premium thereon mentioned to be dependent upon *design*, and the back of the ticket discloses that the use of the words "This coupon is a duplicate of the original" indicates that the tickets set forth in the indictment purport to be duplicates of tickets or coupons entitling the holders

thereof to premiums the payment of which were not dependent upon lot and chance, but upon *intention* and *design.*

The count in question also charges that the International Mining and Investment Company of San Domingo issues monthly a large number of tickets and that a

> "*small proportion* of which tickets or coupons so issued as aforesaid entitle the holder and holders thereof to participate in the distribution in the form of alleged dividends and premiums by such company of a large sum of money, which distribution is dependent upon lot and chance." (13.)

There is no allegation in the indictment charging that the tickets sent to Todd are part of said *small proportion,* nor do the words used disclose anything more than the conclusion of the pleader drawn from an inspection of the tickets themselves with reference to their purport. The second subdivision of the statute is a short sentence and necessarily means that the ticket must itself purport to represent a chance, purport that the chances are in a lottery, and that the prize depends upon lot and chance. The tickets set out in the indictment do not purport anything of the kind. They simply purport to be duplicate coupons and that the originals entitle the holder to dividends to be paid by *design* and not chance. A case throwing light on the point that the transportation of the duplicate of a ticket is not an offense is that of *Francis* v. *U. S.,* 188 U. S. 375. The syllabus is as follows:

> "A slip returned by the agent of a lottery which is the duplicate of a slip retained by the

> purchaser, indicating the numbers selected by him, is not a paper, certificate or interest purporting to be or to represent chances, shares and interest in the prizes thereafter to be awarded by lot in the drawings of a lottery."

Nor is there any allegation in the indictment showing that the tickets alleged to be sent to J. P. Todd, showing whether or no the alleged lottery had yet been drawn. The indictment charges that the tickets sent to Todd were, except as to the dates and numbers thereof, similar to those set out. That set out limits the holder's right to a premium to ninety days from date hereof. Even though we concede that the tickets were what the indictment charged, yet unless the lottery was to be drawn after the alleged date of deposit in the mail no offense was committed and the indictment should have at least alleged that the lottery was yet to be drawn and that the time limited in the tickets sent to Todd had not expired. This point has been in effect ruled in *France* v. *U. S.*, 164 U. S., l. c. 682, thus:

> "The language as used in the statute looks to the future. The papers must purport to be or represent an existing chance or interest which is dependent upon the event of a future drawing of the lottery."

There is nothing in the indictment which would enable any person to determine whether the papers sent to Todd entitled him to receive a premium as a result of a drawing to be had after the unknown and unalleged date therein limited. If the date of the ticket sent to Todd limited the time of payment to ninety days, as the tickets set forth in

the indictment and limited to ninety days after December 20, 1911, limited them, then even though the date was to the grand jurors unknown, there should have been an allegation disclosing that the date of the ticket was within ninety days prior to September 17, 1911. From aught that appears in the indictment the ticket might have been dated ten years before and purport to entitle the holder to a dividend ninety days after said date But the transmission of such a ticket would not be a crime. For:

> "If the lottery has been drawn, the interest is no longer dependent upon it. The condition upon which the bet or interest was dependent has happened, the solution of the problem has already been arrived at; the bet has already been determined." (*France* v. *U. S.*, 164 U. S., l. c. 682.)

Says Bishop, Sec. 81, New Criminal Procedure:

> "The indictment must allege every fact and modification of fact legally essential to the punishment to be inflicted."

The indictment is also insufficient in that it discloses on its face that a large number of tickets were issued each month and that only a small proportion of the tickets entitle the holder to dividends. It is impossible, however, to determine whether or no the tickets set out belong to the small proportion entitling the holders to premiums or to that large proportion that do not. Nor does the indictment charge that the tickets sent to Todd are in words and figures, except as to date and number, similar to those set forth in the indictment. A grammatical construction would lead to the conclusion that the

pleader was describing the large number of tickets issued monthly, but whether they belong to the large or small proportion it is impossible to determine. In any event the tickets alleged to be sent to Todd are not set out or described. So that the indictment is fatally defective in that the pleader ignored those rules making it essential to the validity of an indictment

> "that it contains averments of the facts which constitute the offense it charges so certain and specific that upon conviction or acquittal thereon it, and the judgment upon it, will constitute a complete defense to a second prosecution of the defendant for the same offense."
>
> *Floren* v. *U. S.*, 186 Fed. 961.
> *U. S.* v. *Hill*, 124 U. S. 483.

The mere repetition of the language of the statute is not sufficient in the light of the facts set forth in this indictment.

> *Evans* v. *U. S.*, 153 U. S. 584, 587.
> *Cochran* v. *U. S.*, 157 U. S. 286.

If the unknown date was such as to convert the ticket into so much waste paper no crime was committed. Since it was unknown to the grand jurors it should have been alleged to be lost or destroyed, or the reason for lack of knowledge given and the date should have been given approximately.

But the indictment fails to allege that the tickets purported to entitle the *winners of prizes* to participate in the distribution of prizes and alleges instead that the tickets entitled the *holders* to participate in

dividends, such allegation contradicts the idea that the tickets referred to a lottery.

Risien v. *State*, 44 T. C. Rep., 413, 715 to 974.

IX.

The evidence was insufficient to sustain the charge.

The indictment charges that Fremont Weeks sent "one whole or dollar ticket and one half or fifty cent ticket." (12.) To sustain proof of the charge the Government introduced Exhibit 3, same being a letter from Todd. The request to Weeks therein contained is concluded in the following language:

> "Parsons, Kans., Sep. 17, '11.
> Mr. Fremont Weeks.
> Dear Friend: Enclosed find one dollar for which send me one whole *or two halves*, and oblige. (54)
> J. T. TODD."
> (54.)

It will be noted that the letter is in the alternative and requests "one whole" *or* "two halves." The witness Todd identified the letter as written to him (55) and then identified Exhibits 1 and 20 as similar to those referred to in said letter.

The witness failed to answer the question as to whether or not Exhibit 20 was similar to the half ticket referred to in his letter of September 17, and said exhibit was not identified by the witness, notwithstanding this was received in evidence over objection. So that while we concede that Exhibit 20

was similar except in date and number to that set forth in the indictment, *yet it was not identified as similar to that Todd says he received.* The letter having called for "one whole" *or* "two halves" and the indictment charging the mailing of one whole and one-half and the proof being Todd's recollection as to having received what was called for in the letter, the charge has not been sustained. But in view of the fact that there was no identification by Todd of Exhibit 20 or of any half ticket as being similar to that sent to Parsons in response to letter of September 17, 1911, excepting Exhibit H (63) and said exhibit being altogether different from that set forth in the indictment, it follows that unless the proof shows that a whole ticket was sent to Todd then the charge remains unproved in its entirety. Let us examine Todd's testimony (63):

> "I can't remember what denomination the tickets received by me in September were—whether it was a dollar, a whole or two halves—I can't remember. It was either a whole or two halves. Might have been quarters for all I know—some quarters—or might have been a half and two quarters. As I say, I wrote for a whole ticket. I preferred a whole ticket all the time. If he didn't have that why would he send what he had. These were the tickets I referred to (indicating)."

Todd then identified Exhibits G and H as being duplicates of the tickets Weeks had sent him. It is true Todd also identified Exhibit 1 as being similar to the ticket *referred* to in his letter to Weeks. But he did not identify it as similar to the ticket received by him. (53, 64-78-85.)

The foregoing is the testimony of the *only* witness showing whether the tickets alleged in the indictment were sent. The only ticket identified as being similar to the "half ticket," set forth in the indictment, is Exhibit "H" (63) and same was identified by Todd as "similar." From which it follows that there is no proof whatever that a half ticket was sent and as to that there is a fatal variance betwen the pleading and proof. With reference to the whole ticket, the proof discloses that a duplicate of Exhibit One *might* have been sent. But proof of a criminal charge should be stronger than might. A "might" is not sufficient to make even a *prima facie* case in a civil suit and if not, how can it be the basis of a verdict requiring support from proof beyond a reasonable doubt? This court, in *Pleasants* v. *Tant*, 22 Wall. 116, has clearly laid down the rule in civil cases.

> "Before the evidence is left to the jury, there is a preliminary question for the judge, not whether there is literally no evidence, but whether there is any upon which a jury can properly proceed to find a verdict for the party producing it, upon whom the *onus* of proof is imposed. * * * It is the province of the court, either before or after the verdict, to decide whether the plaintiff has given evidence sufficient to support or justify a verdict in his favor. Not whether on all the evidence the preponderating weight is in his favor, that is the business of the jury, but conceding to all the evidence offered the greatest probative force which, according to the law of evidence, it is fairly entitled to, is it sufficient to justify a verdict? If it does not, then it is the duty of the court after a verdict to set it aside and grant a new trial."

Defendant invokes the application of that rule.

But there is not a syllable of testimony showing that the tickets in question entitled the holder to prizes from a lottery or gift enterprise. There is *not a particle of evidence* showing that the distribution was *dependent* on lot and chance. Nor is there any *testimony* showing that a "drawing" was to be had *after* the date Todd says he received tickets in September, 1911, or after the date of mailing.

From all of which it follows that the judgment of conviction should be reversed and defendant discharged.

Respectfully submitted,

MARTIN J. O'DONNELL,
Attorney for Plaintiff in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1913.

FREEMONT WEEKS, PLAINTIFF IN ERROR,
v.
THE UNITED STATES.
No. 461.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

BRIEF FOR THE UNITED STATES.

STATEMENT.

At the opening of the trial the defendant moved for the return of certain lottery tickets, letters, and other articles which had been taken from his house by the police without any search warrant, and were at the time in the possession of the United States attorney (Tr. 35). The court overruled the motion.

Later on in the trial the court admitted the property in evidence over the objection of the defendant (Tr. 42).

The defendant having been found guilty—on a single count only (Tr. 21, 22)—comes here on writ of error, making fifteen assignments of which the only one requiring notice is in substance that the retention of this property and its admission in evidence against him violated his right to be secure from unreasonable searches and seizures and to refrain from being a witness against himself, as guaranteed by the fourth and fifth amendments.

ARGUMENT.

The question is no longer open.

Adams v. *N. Y.*, 192 U. S., 585.

Hale v. *Henkel,* 201 U. S., 43.

Amer. Tobacco Co. v. *Werckmeister,* 207 U. S., 284, 302.

Holt v. *U. S.*, 218 U. S., 245, 252.

U. S. v. *Wilson* (C. C. N. Y.), 163 Fed., 338.

Hardesty v. *U. S.* (C. C. A. 6th C.), 164 Fed., 420, Judge (now Mr. Justice) Lurton concurring.

The *Adams* case is sought to be distinguished on the ground that it involved a State action, whereas this involves a Federal action. The distinction does exist on the facts, but it is immaterial because the court passed that phase of the *Adams* case and based the decision on the point that, even if the

amendments were applicable to State action,[1] they had not been violated.

The subsequent cases cited above have considered the question closed.

CONCLUSION.

The judgment should be affirmed.

WINFRED T. DENISON,
Assistant Attorney General.

NOVEMBER, 1913.

[1] This point was subsequently decided in *Twining* v. *New Jersey*, 211 U. S. 78, 92.

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